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ABSTRACT

The history and present legal status of tenure in colleges and universities are considered. The evolution of tenure is traced in conjunction with the role that the American Association of University Professors (AAUP) has played since 1915 in the development of tenure and academic freedom in higher education. AAUP has a quasi-legal investigative committee that serves to study each case brought before it and then to make recommendations to the organization that can lead to censure of the college or university. The committee has provided the support and the legal basis for faculty members to take their cases to the court system. Court cases in the early 1970's that involve tenure and academic freedom issues are considered. The first step in the grievance process is internal grievance resolution, and the second step is AAUP intervention. The cases that are reviewed represent landmark decisions handed down in the past decade in the areas of employment contracts, procedural issues related to the 14th amendment due process rights, financial exigency, moral turpitude, dissention as related to academic freedom, and age discrimination. A comprehensive list of 86 additional cases pertinent to these topics is appended. Additionally, the June 1980 case of Maija S. Blaubergs vs. Board of Regents of the University System of Georgia, James A. Dinnan, et al. is examined. All the pertinent AAUP statements between 1915 and 1980 related to academic freedom and tenure and extensive legal and nonlegal bibliographies are appended. (SW)

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THE CURRENT LEGAL STATUS OF TENURE IN INSTITUTIONS OF HIGHER EDUCATION

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December 1980

THE CURRENT LEGAL STATUS OF TENURE
IN INSTITUTIONS OF HIGHER EDUCATION

Abstract

The paper begins with a history of tenure from 1915, the year in which the AAUP was founded. It traces the evolution of tenure in conjunction with the role that the AAUP played in the development of tenure and academic freedom in higher education. The courts' involvement with tenure and academic freedom is then discussed through a series of noted cases beginning in the early 1970's. The latter section of the paper is devoted solely to an investigation of the recent case of Maija S. Blaubergs vs. Board of Regents of the University System of Georgia, James A. Dinnan, et al. [June 1980].

Included in the appendices are all the pertinent AAUP statements between 1915 and 1980 related to academic freedom and tenure and extensive legal and non-legal bibliographies.

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INTRODUCTION

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any straight jacket upon the intellectual leaders in our colleges and universities would imperil the future of our nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evalute, to gain new maturity and understanding; otherwise our civilization will stagnate and die [Judge Wright in Browzin v. Catholic University of America, page 846, n.2].

Regardless of one's interpretation or definition of academic freedom, few, if any, would argue against its necessity. Freedom within the university community has been the byword of scholarship since the inception of higher education centuries ago. Yet, in 1980, legal incursions have been made into higher education, academic freedom and the issue of tenure that could destroy the entire concept as we know it today and have known it for years. The intent of this paper is neither to defend tenure nor to argue against its utility. Rather, this author intends to outline the origin and history of tenure as we know it today, to illustrate the various legal issues that have occurred with tenure, particularly over the past ten years, and then to demonstrate the drastic legal change in attitude toward higher education that has resulted from the 1980 case of Dr. James A. Dinnan of the University of Georgia.

Louis Joughlin [1967, pp. 35-36] summarized the concept of academic freedom when he wrote:

1. The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

2. The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of appointment.

> 3. The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence, he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

Thus, if one is inclined to accept the necessity of academic freedom as proposed by Judge Wright, in light of the clarifications presented by Joughlin, there may be cause for grave concern over the increasing role of the United States legal system in deciding tenure matters formerly left to institutional jurisdiction.

THE HISTORY OF TENURE

Article I--Purpose of the Constitution of the American Association of University Professors states:

> The name of this Association shall be the American Association of University Professors. Its purpose shall be to facilitate a more effective cooperation among teachers and research scholars in universities and colleges, and in professional schools of similar grade, for the promotion of the interests of higher education and research, and in general to increase the usefulness and advance the standards, ideals and welfare of the profession [Joughlin, 1967, p. 73].

The American Association of University Professors (AAUP) was founded in 1915. Dr. John Dewey, the association's first president decided at that time that a committee was needed which would concern itself solely with the issues of academic freedom and tenure. The main purpose of the committee was to formulate rules and regulations regarding academic freedom. It was not felt that this would primarily be an investigating committee. Joughlin [1967, p. 155] notes that the rationale for this was simply that this committee was comprised of members of similar academic freedom and tenure committees from pre-existing groups: the American Economic Association, the American Political Science Association and the American Sociological Society. In that first year,

however, there were eleven cases presented to the committee for their consideration and mediation. Clearly, the groundwork had been completed for the future abundance of infringement of academic freedom cases.

The Committee on Academic Freedom and Tenure of AAUP issued its 1915 Declaration of Principles at its annual meeting on January 1, 1916 [See Appendix A]. In issuing this declaration of principles, the committee stated:

> The safeguarding of a proper measure of academic freedom in American universities requires both a clear understanding of the principles which bear upon the matter, and the adoption by the universities of such arrangements and regulations as may effectually prevent any infringement of that freedom and deprive of plausibility all charges of such infringement. This report is, therefore, divided into two parts, the first constituting a general declaration of principles relating to academic freedom, the second presenting a group of practical proposals, the adoption of which is deemed necessary in order to place the rules and procedure of the American universities, in relation to these matters, upon a satisfactory footing [Joughlin, 1967, p. 157].

In 1940, the same committee issued an updated statement of principles on academic freedom and tenure [See Appendix B]. This document stands today as the basic creed of the AAUP in relation to academic freedom and tenure. From 1940 until 1976, the AAUP Committee A on Academic Freedom and Tenure has issued an abundance of statements on both procedural standards and ethical issues [See Appendices C through N]. It has become clear that the role of AAUP has grown from that of a body merely issuing guidelines regarding academic freedom to that of a "regulatory" association. Although it is not mandatory that any college or university follow the AAUP guidelines, virtually all of the public institutions, and a large percentage of private institutions, of higher education in this country do. In light of declining enrollments, the overabundance of qualified teachers, and severe financial exigency in many institutions of higher education in this country, tenure has once again become a most critical issue in academia. Suddenly, the plethora of AAUP guidelines is being taken as gospel, and faculty are now waging war to retain their positions with a vigor that has never been evident before.

Walter Adams [1974, pp. 122-23] stated that tenure and academic freedom are intended to serve three functions:

1. To protect colleges and universities from external pressure.
2. To defend academic freedom from its enemies within the academy.
3. To follow untried trails and to explore the frontiers of knowledge without fear of dismissal before the task can be finished.

Dr. Adams' list of functions certainly sounds ideal, but in the same address [1974, p. 125] he concludes:

> As I leave you to your new president and such militancy as you can muster, let me close with the hope that in the battles which lie ahead you will not fall victim to confusion, intimidation or division. You are heirs of a great tradition which holds that happiness is the fruit of freedom and freedom the fruit of courage.

It appears that Dr. Adams is well aware of the tenure battles to come and is urging his colleagues to fight for their rights in academia. Was he also aware in April 1974 of the innumerable legal and quasi-legal investigations regarding tenure that were to occur over the next six years?

Once awarded academic tenure by a particular institution of higher education, a faculty member holds a continuous appointment at that institution until retirement or voluntary resignation. Tenure may be revoked only for adequate cause, financial exigencies or to meet significant program changes. "To receive tenure, a faculty member must satisfy minimum eligibility requirements, demonstrate a certain performance level, and reveal adequate potential for growth and development" [Chait & Ford, 1975, p. 125]. Traditionally, the new faculty member after receiving the doctorate has to serve a three to seven year probationary period before being considered for tenure. During that time, the faculty member is constantly being rated in terms of teaching performance, research and publication record, departmental/community involvement and collegiality. Herein lies the first problem with granting tenure. Regardless of all the AAUP guidelines, it is still left up to the individual institution of higher education to grant or to deny tenure.

The Griggs case [Griggs v. Duke Power Company, 1971] has proven by law that colleges and universities need to demonstrate that the conventional criteria for tenure--a terminal degree, a given probationary period and a particular rank are related to job performance. Griggs stated that "Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question." It would appear that this mandate is not difficult to justify in higher education. More difficult to rationalize are the individual criteria held by each tenure committee in their decision-making process. Do committees rate individuals for tenure on the basis of teaching performance, publications, research grants, departmental activities, personality, or a combination of all. "If only lip service is paid to teaching and what really counts is the candidate's publication record, then the institution, as the employer, must be able to prove that the publications are 'demonstrably' related to the job, which is teaching. Similar arguments will have to be advanced if potential is evaluated on the basis of present performance or on meeting minimum eligibility requirements" [Chait & Ford, 1975, p. 126].

Virtually every institution of higher education in the country has some sort of "tenure" regulation in their contracts with the faculty. Most of them are based on the AAUP guidelines, and this is what has touched off the spark of legal recourse among dismissed faculty members. Faculty contract matters are so intertwined with AAUP contract guidelines, that the faculty member who finds he or she is about to lose a teaching position is now legally able and usually quite willing to fight back. It is bad enough to be forced to work for seven years under the probationary eye of a tenure committee, as Silber notes [1973, p. 47]: "The seven year rule drives young scholars in overworked fields into wanton production of the obvious, the unnecessary or the speciously innovative. Well aware that they must make their mark within six years, young faculty rarely have the time to think, explore, speculate and grow in silence and privacy."

On the university side, however, Silber continues [1973, p. 49]: "In the case of these individuals on whom the future of a great institution often depends, the rigid code of the AAUP poses an intolerable dilemma. The university must commit more than $600,000 in lifetime salary to a person whose character or intellectual promise is uncertain or, though aspiring to greatness, it must fire those highly promising individuals. Neither course is defensible."

Throughout the past sixty-five years, AAUP has become a motivating force by advocating that its policies be used by colleges and universities in contract and tenure decisions. There is much debate over whether tenure should be maintained as is or whether another type of job security should replace it. But that is not the issue here. What matters here is that tenure policies, as they are conceived today, are here to stay. The young faculty member is aware of this, of the scarcity of teaching openings, and of the fact that he or she now has legal recourse if aggrieved. Consequently, the aggrieved faculty member is turning more and more to the AAUP investigative committee and to the legal system for resolution of contractual controversies.

There are a number of issues surrounding faculty dismissal which have forced colleges and universities into the courtroom including insufficient notice of dismissal, alleged financial exigency, improper dismissal, dismissal for causes unrelated to the university position, and affirmative action. The latter is perhaps one of the most difficult to prove, but it is also rapidly becoming one of the most crucial elements of legal battles on tenure. Women and minorities have only recently begun to be hired in any appreciable numbers in higher education. Consequently, in cases of retrenchment, they will be the first to be let go based on their untenured lack of seniority. Thus, what happens to affirmative action? A more striking example of affirmative action is provided by Fran French [1979, pp. 139-140]:

> Women professors are subject to the same threats as men and in addition must face the jeopardy of violating the rules applicable only to women. Frequently, the woman in academe does not become aware of these rules

> until she herself becomes the victim of their application. This may explain why awareness never comes to most men.

She further delineates ten unwritten rules seen as having served as guidelines for administrative decisions [1979, p. 140]:

1. A woman professor must not be married to a tenured professor, and competence in one's job is not sufficient grounds for the granting of tenure.
2. Women professors are employed to teach lower level courses, not graduate courses.
3. Women professors should not socialize with male professors, especially if the women professors are not married, and women should not offer their opinions or ideas in faculty meetings.
4. It is not unethical to fire a woman professor without cause since women don't take their jobs seriously anyway.
5. Men get leaves of absence for professional improvement; women don't. And one Ph.D. in the family is enough.
6. Women should not ask for summer employment unless there are no married men in the department; women do not have families to support and if a woman professor is competitive at all, she is "too competitive."
7. Women faculty hae family obligations; men do not. Professional women must not travel to professional meetings with professional men. Fringe benefits, such as travel money for professional activities, are not available to married women faculty.
8. Women faculty should not marry men in the same academic discipline.
9. Women should wait quietly to be appointed to committees or to be asked to serve the department in some capacity. A woman who seeks such appointments is too aggressive and therefore not fit for tenure.
10. Something terrible will happen to a male professor if he shares an office with a female professor.

The ten "rules" are listed here because sexual discrimination is probably one of the most prevalent types of discrimination on campuses today.

We have seen tenure, as it is known today, develop simultaneously with the growth of the AAUP from a relatively informal organization to one which began to propose guidelines for tenure and other academic affairs to one which today has the strongest impact on colleges and universities. The AAUP has become the spokesperson for faculty members wishing to dispute negative tenure or retention decisions. It has provided within itself a quasi-legal investigative committee which serves to study each case brought before it and then to make recommendations to the organization which can lead to censure of the college or university.

And it has provided the support and the legal basis for a faculty member to take his or her case to the court system of this country. Let us now investigate tenure and its relationship with the legal system

TENURE AND THE COURTS

> In discussing these legal dimensions [of tenure], we must first of all distinguish between judicial approaches to tenure in public and in private institutions. A tenure plan promulgated by a governing board of a public institution is generally considered a form of sublegislation having the force of law. A finding that a discharge was contrary to the tenure plan of a public institution can generally be followed by an order to reinstate the teacher, since the discharge was, in effect, beyond the board's authority and contrary to state law. In a private institution, any right to tenure is contractual rather than statutory [Rosenblum, 1963, p. 161].

Thus, in discussing the law and tenure, we must first make the distinction between statutory illegalities, as evidenced in a public institution, and contractual illegalities, as evidenced in a private institution. It is then necessary to delineate the means of remedy available to the aggrieved faculty member. There are three major steps in the grievance process:

1. Internal grievance resolution.
2. AAUP intervention, often resulting in a quasi-legal investigation by their Committee on Academic Freedom and Tenure.
3. Resolution in the courts.

The first step in the grievance process, internal grievance resolution, will only be mentioned briefly because it does not in itself contribute to the legal decisions regarding tenure. Keast [1973, p. 6] notes that procedures for grievance are open in 87% of all institutions. Nearly 20% of the private four year colleges and 16% of the private universities lack such appeal procedures. However, virtually all public institutions have some contractual process established for grievance. For example, the Agreement between Wayne State University and the Wayne State University Chapter of the AAUP, July 1, 1978 to July 31, 1981 [pp. 35-40] clearly enumerates all the steps in the grievance procedure and carefully explains each. Those steps are:

A. Intent
B. Definition
C. Informal Procedure for Handling Grievance
D. Filing of a Grievance
E. Formal Procedure for Handling Grievances
F. Right to Counsel
G. Extensions of Time Limits
H. Settlements
I. Expenses
J. Withdrawal of Grievance
K. Rights of Management
L. Additional Time for Internal Appeal
M. Right to Representation

Thus, at Wayne State University and most other public institutions, the legal issues primarily discussed in this paper would result only after unsuccessful resolution of the grievance through those internal channels.

Legal remedies have always been present to resolve questions of academic freedom and tenure. However, it was not until the early 1970's that faculty members began to freely avail themselves of the courts as a means of resolution. It was not until 1980 that the courts chose to take on a non-procedural tenure decision case, which will be discussed later in this paper.

A 1968 Harvard Law Review article [Developments in the Law--Academic Freedom, 1968, p. 1102] makes these general observations and propositions regarding the rights of faculty members:

1. Questions of tenure as such have played comparatively minor roles in judicial development of applicable norms and doctrines.

2. Courts have been less interested in allocating rights on a stratified basis between tenured and nontenured faculty than in examining basic due process and first amendment questions that can affect the whole academic community.

3. The courts have stressed procedure in public institutions, entitling faculty there to adequate notice, hearing and opportunity for representation before they can be dismissed.

4. Judicial recognition has been accorded the principle that public employees should not lose their jobs because of their exercise of substantive constitutional rights such as free speech.

5. Dismissal or firing is not equated legally with nonrenewal of a teaching appointment.

6. Constitutional procedural protection is assured tenured faculty in public institutions, but nontenured faculty can be certain of

constitutional protection only against dismissal in the course of an employment contract.

7. Constitutional procedural protection is available to a nontenured faculty member contesting nonrenewal of a contract if he can show initially that nonrenewal was due to his exercise of a constitutional right.

8. These developments with regard to public institutions do not have automatic counterparts in private institutions in the absence of contractual provisions or demonstrable customs embodying them.

9. Thus, courts can offer little certainty of protection to the aggrieved professor in the private sector who feels that his tenure rights have been invaded.

In reviewing this 1968 list, it becomes clear that until that time there were few tenure cases taken to courts and that those which did result in court decisions were decided solely on procedural merits.

AAUP Committee A on Academic Freedom and Tenure

The second step in the grievance process, AAUP intervention, implies an investigation by the committee on academic freedom and tenure into the entire matter. This would ordinarily come after attempting resolution by internal grievance processes. However, it does not preclude simultaneous court action. As of October 1980, there are 45 censured institutions of higher education in the United States, including three in Michigan [See Appendix P]. It should be noted that the institution itself is not censured, but its administration and governing board are. It must also be emphasized that this censure not only comes from the AAUP, but also from the Association of American Colleges and over one-hundred other professional and educational organizations. Therefore, censure of a university administration can have wide ranging effects. As stated by the AAUP [1980, p. 364]:

> This list is published for the purpose of informing association members, the profession at large, and the public that unsatisfactory conditions of academic freedom and tenure have been found to prevail at these institutions . . . Placing the name of an institution on this list does not mean that censure is visited either upon the whole of the institution or upon the faculty, but specifically upon its present administration [which] includes the administrative officers and the governing board of the institution.

> Members of the association have often considered it to be their duty, in order to indicate their support of the principles violated, to refrain from accepting appointment to an institution so long as it remains on the censure list. Since circumstances differ widely from case to case, the association does not assert that such an unqualified obligation exists for its members; it does urge that, before accepting appointments, they seek information on present conditions of academic freedom and tenure from the association's Washington office and prospective departmental colleagues. The association leaves it to the discretion of the individual, possessed of the facts, to make the proper decision.

In 1974, Voorhees College, South Carolina, was censured by the AAUP and remains on the list of censured administrations today [AAUP, 1974, pp. 82-89]. In April 1969, the college was taken over by armed students who barricaded themselves inside the library. The South Carolina National Guard was called onto campus. The students were concerned about Black Studies programs, the recruitment of additional black faculty and college involvement in the surrounding community. The incident was quickly brought under control, however, with several arrests and suspensions and the ultimate closing of the college for the remainder of the spring term. Professor Bernie Dingle, who had negotiated the arrangements under which the students agreed to end their occupation, along with five other faculty members at the college, were notified in February 1970 that they would not be reappointed for the 1970-71 academic year. In the case of Professor Dingle, the administration expressed its intention to engage someone holding a Ph.D. in physics who could teach both physics and physical science. However, his department head and several colleagues had expressed complete faith in his teaching abilities in both areas. Furthermore, all released faculty members were banned from the college campus and allowed only the opportunity to retrieve their personal property. After a thorough investigation, the AAUP concluded that they were not allowed academic due process, that the administration did not assume the burden of demonstrating cause for dismissal, that the faculty members were not allowed a hearing before an appropriate faculty body, that a transcript of the proceedings before the

board's executive committee was not provided and that inadequate severance salary was paid. The AAUP also indicated that in dismissing Professor Dingle for stated cause which was manifestly not the real cause for the action, the administration and board abused academic due process. They note that adequacy of cause for dismissal is not discernible and that, "Prohibiting these faculty members from appearing physically on the Voorhees College campus was a highly excessive feature of the dismissals which calls for particular reproof" [AAUP, 1974, p. 88].

The Voorhees College case is one example of the investigatory process of AAUP. To illustrate that it is not a process taken lightly, the following main steps are taken in an investigation [Joughin, 1967, pp. 11-23]:

1. Formulation of a complaint
2. Receipt of complaint by the general secretary
3. Acknowledgement of a complaint
4. Communication with the local chapter of the association
5. Decisions regarding the possibility of a violation and the usefulness of mediation or investigation
6. Attempted mediation
7. Letter from the general secretary to the chief institutional administrator describing the case status
8. Decision to appoint an ad hoc investigating committee
9. Special and emergency investigations
10. Appointment of the ad hoc committee
11. Briefing of the ad hoc committee
12. The investigation
13. Avoidance of publicity
14. The received report
15. Committee A consideration of the report
16. Submission of the report to the involved parties
17. Publication of the report
18. Recommendations of Committee A before the council and the annual meeting
19. Publication of annual meeting action
20. Ultimate withdrawal of censure

It would appear that the AAUP is very deliberate in their investigatory proceedings which indicates why there are only 45 institutions in the entire country currently on censured status. It would also seem that given the thoroughness of the AAUP investigations and the relatively few institutions on the censured list, censure is not a matter to be taken lightly.

Not every case investigated by the AAUP Committee on Academic Freedom and Tenure is decided in favor of the aggrieved faculty member. Dr. Stuart McLeod of The Polytechnic Institute of New York [AAUP, 1974a, p. 416] was released after spending nine years at the Institute, the last several at the rank of associate professor. The decision of the university was based on the fact that there was an impending merger between their institution and the New York University School of Engineering & Science. The merger had brought about several changes in criteria for tenure which had been disclosed to Dr. McLeod. Indeed, an additional two years of non-tenured status was granted to him to assist him in adapting to the changes. Yet, when he failed to do so, he was denied tenure and subsequently filed a grievance with the AAUP. The investigatory committee recommended that the decision to dismiss Dr. McLeod be upheld and that it was in line with the 1940 Statement of Principles on Academic Freedom and Tenure.

One of the more interesting and unique cases involves that of Marquette University [AAUP, 1976, p. 83]. In 1976, the university was placed on the censured list because it released a tenured professor of theology, Quentin Quesnell. Professor Quesnell was a Jesuit priest who sought release from his religious vows and termination of his membership in the Society of Jesus. The investigatory committee found that although resignation from the priesthood can bear on his academic status, the 1940 Statement of Principles:

> . . . does not allow an administration to make and implement a judgment of this nature unilaterally. Rather, the administration must assume the burden of demonstrating grounds for its actions in an appropriate academic proceeding . . . Rather than calling for a relationship with its religious faculty that is not only supportive of religious identity but consistent with the 1940 Statement of Principles, the Marquette University administration has entered into an arrangement that conditions the continuing tenure of Jesuit faculty on the approval of religious as distinct from academic colleagues, thus departing from the applicable standards of the academic community as enunciated in the 1940 Statement" [AAUP, 1976, p. 94].

Marquette University remains today on the list of censured administrations.

There are also cases where the AAUP committee will neither place the institution on censure nor disagree with the overall actions taken by the institution, but will make a particular comment about the case--in effect, a warning and a recommendation for change. Professor Richard Rosenbaum of Macomb County Community College in Warren, Michigan [AAUP, 1976, p. 369] was suspended for disciplinary reasons for what he felt was a severely harsh period of time. Through collective bargaining and the regularly instituted procedures of the college, the penalty was reduced considerably. However:

> The investigatory committee notes with much regret the deficiencies in the collective bargaining agreement at Macomb County Community College, the injustice done Professor Rosenbaum, and the evident intent on the part of some of his faculty colleagues to make him suffer further penalties for his efforts to pursue his complaint through other channels when those available to him at Macomb County Community College were exhausted [AAUP, 1976, p. 376].

As a final example of the AAUP investigations, the Bloomfield College case [AAUP, 1974, pp. 50-66] is important because it not only resulted in censure by the AAUP in the strongest possible terms, but it also resulted in an AAUP-filed suit in the New Jersey Superior Court [AAUP et al. v. Bloomfield College et al.]. Bloomfield College is a four year undergraduate institution, located in northern New Jersey, with a total enrollment of approximately 1,500 students. In addition to the main campus which covers thirteen acres near the central business district of Bloomfield, they also own 320 acres in an adjacent county which was purchased in 1967 for future development. Currently, the land is the site of a country club owned by the college. Several long-range studies done by the college in 1972-73 indicated a need for budgetary cutbacks. Consequently, in June 1973, the president of the college notified thirteen faculty members, eleven of whom were tenured, that due to financial exigency their contracts would be terminated as of June 1974 and that they were to take no part in either teaching, participating in college governance or voting privileges during the 1973-74 academic year. Three months prior to this, all thirteen

had received contract renewals for the ensuing year.

The thirteen faculty members included the senior member at the college who had been there for over twenty-five years and another long-term faculty member who had been chairman of the biology department and was credited with the recent construction of the science building. There were no stated allegations of unsatisfactory teaching, inadequate scholarship or moral turpitude. In September 1973, the college hired twelve new faculty members to replace those it dismissed. The case in itself is extraordinarily complex, made more so by the lack of cooperation on the parts of the president and the administration. However, the AAUP committee concluded that the thirteen faculty members were dismissed in flagrant violation of both the AAUP 1940 Statement and the official policies of Bloomfield College. They also stated that the administration had not demonstrated their financial exigency in any manner at all. Finally, they noted:

> The abolition of the existing system of tenure at Bloomfield College by the administration and board of trustees, in the face of strenuous objection by the majority of the faculty, is an unconscionable repudiation of basic principles of academic freedom and tenure to which the overwhelming weight of opinion and practice in American colleges and universities is firmly committed; it merits condemnation in the strongest terms [AAUP, 1974, p. 64].

Bloomfield College today is no longer on the censured list because the AAUP simultaneously undertook their investigation and filed litigation against the president and board of trustees [AAUP et al. v. Bloomfield College et al., 129 N.J.Super. 249, 322 A.2d 846, 853 (1974), aff'd, 346 A.2d 615 (App. Div. 1975)]. This is the first AAUP-initiated lawsuit in defense of academic freedom and tenure.

Academic Freedom in the Courtroom

Before looking into the AAUP et al. v. Bloomfield College et al. case it is necessary to first note the two landmark cases regarding academic freedom and tenure, Board of Regents vs Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d

548 (1972) and Perry v. Sindermann, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972). In these two cases, the United States Supreme Court established that faculty members have a right to a fair hearing whenever a personnel decision deprives them of a property interest or a liberty interest under the fourteenth amendment's due process clause. The respondent in Roth had been hired as an assistant professor at Wisconsin State University for a fixed term of one year. He was notified in proper time that he would not be rehired; no reason for the decision was given nor was there an opportunity for a hearing or an appeal. The court noted:

> The state, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and associations in his community . . . There is no suggestion whatever that the respondent's "good name, reputation, honor or integrity" is at stake. Similarly, there is no suggestion that the state, in declining to reemploy the respondent, imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities [Roth at 573-5].

The court also noted that in addition to there being no protected liberty interest, he also had no property interest:

> . . . In these circumstances, the respondent surely had an abstract concern in being rehired, but he did not have a property interest sufficient to require the university authorities to give him a hearing when they declined to renew his contract of employment [Roth at 578].

In the Sindermann case, respondent had been employed as a professor by the Texas state college sytem for ten consecutive years. He had been involved in public disagreements with the board of regents. He was employed on a series of one-year contracts, and at the end of his tenth year, the board elected not to rehire him. He was given no official reason nor the opportunity for a hearing. Unlike Roth, the Supreme Court ruled that he had raised a genuine claim to de facto tenure which would create a constitutionally protected property interest in continued employment. The Court stated:

> We have made clear in Roth that property interests subject to procedural due process protection are not limited by a few rigid technical forms. Rather, "property" denotes a broad range of interests that are secured by "existing rules or understandings." A written contract with an explicit tenure provision clearly is evidence of a formal understanding

> that supports a teacher's claim of entitlement to continued employment unless sufficient cause is shown. Yet, absence of such an explicit contractual provision may not always foreclose the possibility that a teacher has a "property" interest in reemployment.
>
> . . . We disagree with the Court of Appeals insofar as it held that a mere subjective "expectancy" is protected by procedural due process, but we agree that the respondent must be given an opportunity to prove the legitimacy of his claim of such entitlement in light of the "policies and practices of the institution." Proof of such a property interest would not, of course, entitle him to reinstatement. But such proof would obligate officials to grant a hearing at his request, where he could be informed of the grounds for his nonretention and challenge their sufficiency [Sindermann at 603].

Thus, in Roth, the Supreme Court reversed the Appellate Court's decision and in Sindermann it affirmed the Appellate Court's decision. This is not to say that Roth lost and Sindermann won in the Supreme Court. Justice Stewart's opinion in the Sindermann case focused on the factors that can include nontenured teachers within the boundaries of constitutional protection. In the Roth opinion, he stressed the points that led to exclusion of the professor's case from constitutional protection. Rosenblum [1973, p. 174] summarizes:

> The Roth and Sindermann rulings are obviously complementary and should be construed as a unit. Roth held explicitly that allegations by a nontenured teacher that nonrenewal of his contract by a public institution was based on his exercise of First and Fourteenth Amendment rights do not warrant judicial orders that reasons and a hearing be given the teacher by school officials. At the same time, Sindermann held explicitly that such allegations by a teacher are entitled to full exploration in the district court in order to determine whether the college refused to renew the teaching contract on an impermissible basis. With regard to property, Roth held that the Fourteenth Amendment's procedural protections cannot be invoked unless the facts show that the teacher has already acquired interests in specific benefits. Sindermann added that the acquisition of interests subject to protection can be shown not only by formal rules or contracts but by agreements implied from words and conduct in light of the surrounding circumstances.

Now that the basis has been established for legal recourse concerning matters of academic freedom and tenure, let us return to the Bloomfield College case.

One will recall that the AAUP simultaneously began an internal investigation into the matter and initiated litigation against Bloomfield College and the board of trustees. Ralph Brown, Jr., Professor, Yale Law School, states:

> The opinion rises to the occasion in three important respects. First, it is based solidly and simply in contract law, and avoids the shifting sands of constitutional adjudication. Second, it places the burden of proof squarely on the administration to justify an assertion of financial exigency. Third, it orders the reinstatement of the aggrieved faculty members, a remedy still atypical for breach of employment contracts [AAUP, 1974, p. 320].

Unlike Roth and Sindermann, the Bloomfield case has no connection with constitutionally protected rights of due process. It is based exclusively on contractual law. Its importance, however, arises from the fact that it was initiated by the AAUP, that it squarely addresses the issue of financial exigency, and that it provides for the reinstatement of dismissed faculty members. Judge Antell's decision in Bloomfield thoroughly discusses the contractual and financial exigencey issues in a lengthy opinion. He concludes:

> For the reasons given, it is concluded that the individual plaintiffs who were terminated from their positions as faculty members of Bloomfield College are entitled to reinstatement under the terms and conditions of the Bloomfield College Policies on Employment and Tenure.
>
> By way of declaratory relief it will further be adjudged that all plaintiffs serving as tenured faculty members of Bloomfield College prior to June 21, 1973, are now, and shall continue, on tenured status within the terms of the Bloomfield College Policies on Employment and Tenure, and that the provision of Resolution R-58 to the contrary, adopted on June 21, 1973, by the Bloomfield College Board of Trustees, as well as all administrative actions taken thereunder by the defendants, are in all respects ineffi-cacious [Bloomfield at 492].

The crux of the case is whether the financial exigency as proposed by the college was the bona fide reason for the terminations. The judge was completely unable to determine any connection between the so called financial exigency and the reasons for the terminations. On appeal, the judgment for the plaintiffs was affirmed. Obviously, within the confines of this paper, one cannot report on every case related to academic freedom and tenure. Let us investigate some of the major cases of the past decade and then move into consideration of the James Dinnan case of 1980. [See Appendix Q for a comprehensive list of cases related to academic freedom and tenure.]

In Worzella v. Board of Regents, 93 N.W.2d 411 (1958), petitioner asks the state board of regents to reinstate him as professor of agronomy at South Dakota State College. Dr. Worzella served at the college from October 1, 1943 until January 11, 1958, when he was dismissed for insubordination. He claimed that he had permanent tenure under a policy approved by the board of regents. The court noted, "Our constitution prescribes that our state university and colleges shall be under the control of the board of regents. Without the right to employ and the power to discharge its employees, the board loses its constitutional right of control." Thus, the court has vested total authority for dismissal in the board of regents and has affirmed a lower court ruling for dismissal.

Eleven years later in Greene v. Howard University, 412 F.2d 1128 (1969), four students and five faculty members were dismissed from the university for their part in campus disorders occurring in the spring of 1967. The five faculty members did not have tenure and were not requesting reinstatement on that principle. They instead claimed that there was a serioud breach of contract based on the inadequate time of notice of termination. Not only did the judge rule in favor of the faculty members and ordered them reinstated, he further remanded the case to the District Court for the purpose of allowing the faculty members to pursue claims for monetary damages, if they so chose.

In Board of Trustees of Compton College v. Stubblefield, 16 Cal.App.3d 820, 94 Cal. Rptr. 318 (1971), we find one of the more intersting cases of the past few years and perhaps the first which addresses the morality of the person in question. Defendant was suspended from employment as a teacher at Compton Junior College and notified of the board's intention to dismiss him after thirty days. The suspension and dismissal were based upon charges of immoral conduct and evident unfitness for service as provided in their educational code. One evening after class, defendant and one of his female

students in that class were discovered in a parked car, almost completely undressed, by a deputy sheriff. The deputy identified himself as a police officer and was also in uniform. Defendant screamed several epithets at the deputy, abruptly shifted the car into reverse, and, as he sped away, knocked down the deputy with his car, causing minor injuries and damage. The deputy proceeded to chase him in his car, at speeds between 80 and 100 miles per hour, and was able to apprehend defendant only after his female companion forced him to stop the car by grabbing the steering wheel and running the car onto the sidewalk. Defendant pled his case based on the fact that one incident alone does not evidence grounds of unfitness to teach. However, the court ruled that there is a distinction between dismissal from one institution and revocation of one's teaching certificate. It also distinguished between the potential for misconduct with a student and actual misconduct which gains a certain amount of notoriety. The court felt that both potential and notoriety do not need to be present in each case. Because of the actions of defendant with the student, his assault of a police officer, and his resultant high speed chase which endangered many lives and caused much newspaper publicity, the court affirmed the prior ruling and defendant's dismissal was upheld. It is important to remember that the court was not stating that defendant was unfit to teach, per se. Rather, the court was stating that defendant had received so much adverse publicity because of the incident, that he would be totally ineffective as a teacher in that city.

In 1974, we are presented with a case which directly addresses some of the common, yet vague, terminology found in educational employment contracts. Bruno v. Detroit Institute of Technology, 51 Mich.App. 593, 215 N.S.2d 745 (1974), is an appeal for plaintiff who was denied tenure by the institution. Tenure at the Detroit Institute of Technology was based on acceptable performance of duties for a period of at least three consecutive years, assigna-

tion of the rank of associate or full professor and receiving the fourth or succeeding annual contract and have accepted same. Defendant argued that these criteria did not automatically grant tenure to an individual, only that if the individual met those criteria, the institution would then decide whether or not to grant tenure. Judge Valkenburg decidedly disagreed. He first defined the word "acceptable" in terms of teaching performance and also noted that "acceptable" in the dictionary meant only achieving minimal standards. He further stated that since there had been no prior criticism of Bruno's teaching and that since he had received associate professor status in 1964, there was no reason to deny tenure. Defendant then claimed that the tenure criteria meant that one had to have associate or full professor status for at least three years. Judge Valkenburg once again entered the semantic foray and again ruled against defendant. Having found no reason to deny tenure based on the formal written policy in the employment contract, he reversed the trial court's ruling and held that tenure be granted retroactively to the 1966-67 academic year. Most importantly, however, the judge went one step further. He ruled that damages were due plaintiff for the period from 1966-67 to the current year, based on anticipated salary had he remained in his teaching position at the Detroit Institute of Technology versus the salary he would have received if he had made a good faith effort to continue in his profession elsewhere. In ruling for reinstatement of plaintiff to his former position, granting him tenure as of 1966-67, and allowing punitive damages, Judge Valkenburg has very clearly demonstrated the necessity of a very strict interpretation of contract language.

In Rehor v. Case Western Reserve University, 331 N.E.2d 416 (1975), we find an AAUP-supported policy regarding retirement rights and tenure defeated by the court. Professor Charles Rehor was a tenured professor of English who commenced employment at Cleveland College in 1929. Cleveland College became a

a part of Western Reserve University in 1942; that status was maintained until 1967. During all these years, the retirement age was 70. In 1967, there was a merger resulting in the present institution, Case Western Reserve University. In 1969, the board of trustees of that institution modified the retirement policy to change the retirement age to 65, with allowances for continuing of one's own volition until age 68. Any continuation of teaching after age 68 could only be by petition which needed approval of several university committees. The change in retirement policy was in adherence with policy stated in the employment contract and was announced in writing to all employees. Professor Rehor sought continuance of his teaching assignment after he turned age 68 and was denied. Justice Corrigan ruled that the change in retirement policy was a legal alteration, that the process of change and subsequent notitication of faculty was carried out in a legal manner, and that acceptance by plaintiff of his annual contracts for the years between age 65 and 68 implied an acceptance of the change in retirement policy. Thus, the Supreme Court reversed the ruling of the Court of Appeals, held for the lower court ruling, and the professor was forced to retire. This was in direct conflict with the AAUP Committee on Academic Freedom and Tenure which proposed: "Where the mandatory retirement age is reduced, the higher age should still apply in the case of faculty members who are within twenty years of that age at the time of the change" [Edwards and Nordin, p. 244].

In Browzin v. Catholic University of America, 527 F.2d 843 (D.C. Cir. 1975), Dr. Boris Browzin was dismissed from his position as a tenured professor of civil engineering. The school contended that because of severe financial exigency, several programs had to be eliminated; the area in which Dr. Browzin taught was one of them. As an interesting supplement to the Bloomfield case, discussed previously, the court ruled on the basis that financial exigency was irrelevant. What actually mattered was the fact that Dr. Browzin's program was

eliminated; thus, the dismissal was justified. However, the university was also obligated to attempt to find another position within the university for him. The court ruled that plaintiff could show no evidence that the university had not attempted to do so. According to the AAUP guidelines, no one could be hired to replace the professor within two years. Plaintiff argued that a replacement was hired one and one-half years after he was dismissed. The court felt, however, that although Dr. Browzin was qualified to teach in some of the areas of the replacement professor, he was not qualified in the areas for which this particular person had been hired. Consequently, the court stated that the new faculty member was emphatically not hired to replace Dr. Browzin. Finally, in an amicus curiae brief filed by the AAUP, they contended that the 14 month notice of dismissal was insufficient in that the required 12 month notice should be from the end of the academic year and not from the date of notification. Most interestingly, the court stated that Dr. Browzin had never contested that point in any court and, therefore, they would neither consider the point nor allow it to be open to him on appeal.

Two years later, in a case based directly on the Browzin case, further clarification of the AAUP guidelines on financial exigency was made. In Scheuer v. Creighton University, 260 N.W.2d 595 (1977), plaintiff was dismissed as a tenured professor of pharmacy because of financial exigency in the School of Pharmacy. Plaintiff's teaching specialty, medical pharmacy, was taken over by a senior member of the school who was able to teach both medical pharmacy and biochemistry, which plaintiff admitted he could not. The case was ruled against plaintiff, along the same lines as the Browzin case. However, the court specifically addressed the section of the AAUP guidelines on financial exigency which states that the monetary crisis must be institution-wide, not simply restricted to one area. Justice Spencer simply noted that it would be foolish to adhere to this policy in making a claim for financial exigency. This would allow continuation of programs suffering financial losses as long as the institution as a

whole was financially sound. Such a policy would cause the rapid fiscal demise of any institution.

In a reversal of form, the Supreme Court of Rhode Island, in Drans v. Providence College, 383 A.2d 1033 (1978) directly addressed the decision in the Rehor case. Again, a tenured professor was forced to retire by a newly adopted retirement age policy. The court ruled that the college had the power and authority to institute a reasonable, uniformly applicable, mandatory retirement policy. But, the Rhode Island court, in citing Rehor, felt that some reasonable transition steps need to be taken for both plaintiff in this case and those in similar positions. These steps should take into consideration items such as the person's age; ability and willingness to continue to teach; financial burdens because of unexpected retirement; prior notice; pension plan available; and the means give by which the professor will be allowed to continue to teach upon institutional approval. Consequently, the court remanded the case to the Rhode Island Superior Court for consideration of these items, while emphasizing that although unilateral retirement policy changes were legal, they needed to be considered with a little more humanity before a final decision was granted.

The cases discussed above are, quite obviously, not the only ones related to academic freedom and tenure that were litigated in the late 1960's and the 1970's. However, they represent the landmark decisions handed down in the past decade in the areas of employment contracts; procedural issues, related to the fourteenth amendment due process rights; financial exigency; moral turpitude; dissention, as related to academic freedom; and age discrimination. Appendix Q provides a comprehensive list of 86 additional cases pertinent to these topics.

Prior to 1980, courts rarely were involved in disputes concerning the substance of standards and criteria, preferring instead to deal with disputes over the procedures for enforcing standards and criteria. However, the United

States District Court, through Judge Wilbur D. Owens, has brought the "non-substantive" policy to a resounding halt. The next section of this paper will explain why and discuss the ramifications of this precedent-shattering decision.

ACADEMIC FREEDOM VERSUS AFFIRMATIVE ACTION
THE CASE OF JAMES ANDREW DINNAN

There are probably more laws covering employment discrimination than in any other area of higher education. Race discrimination in employment is covered by Title VII of the Civil Rights Act of 1964, as amended by 42 U.S.C. section 1981 and by Executive Order 11246 as amended. Sex discrimination is covered by Title VII, by Title IX of the Education Amendments of 1972, by the Equal Pay Act and by Executive Order 11246. Age discrimination is covered, in part, by the Age Discrimination in Employment Act. Discrimination against the handicapped is covered by the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1974. Discrimination on the basis of religion is covered by Title VII and Executive Order 11246. Discrimination on the basis of national origin is covered by Title VII and by Executive Order 11246. Discrimination against aliens is covered indirectly under Title VII and directly by 42 U.S.C. section 1981. Discrimination against veterans is covered in part by 38 U.S.C. section 2012. Clearly, the federal government has created statutory provision to eliminate virtually every area of discrimination within higher education. On May 4, 1980, however, a process was begun that would drastically alter legal encroachment into higher education tenure decisions.

Maija Blaubergs, an assistant professor at the University of Georgia, was denied tenure this past spring for the third consecutive year. She sued the university, charging that she had been denied tenure because she was a woman. If this were true, it would be in clear violation of Title VII of the Civil Rights Act of 1964. Professor James A. Dinna, a tenured professor of adult education and reading, was one of nine members of a promotion review committee

which denied tenure to Ms. Blaubergs by a vote of six to three. There is an appeal process within the University of Georgia to which Ms. Blaubergs availed herself. However, her appeals to three senior professors, the dean of her college, the president of the university, and the board of regents were all denied. Consequently, she chose to file suit in the United States District Court for the Middle District of Georgia.

The attorney for Ms. Blaubergs, Andrew Marshall, called on six members of the promotion review committee to reveal how they voted and why. Federal Judge Wilbur D. Owens ordered them to comply and, under threat of contempt charges, five of the six did so. Professor James Dinnan was the sole exception. Shanker [1980, p. E7] noted:

> Dinnan maintained that the right of professors to recommend who should teach is essential to quality higher education. He said that the integrity of the academic process would be undermined if the confidentiality of the votes were breached. Dinnan believes that a grave threat to academic freedom exists when a judge jails a professor for protecting the process needed to make honest decisions about faculty.

On June 4, 1980, Judge Owens gave Professor Dinnan thirty days to comply with his order. For each of the thirty days on which he did not comply, he levied a fine of $100. On July 3, 1980, Professor Dinnan appeared again before Judge Owens and again refused to comply with his order. Consequently, Judge Owens sentenced him to ninety days in federal prison for contempt of court. Professor Dinnan was released from prison on October 3, 1980, and was to appear before Judge Owens again on November 3, 1980. However, Dinnan's attorney has appealed the case to the United States Court of Appeals for the Fifth Circuit. As of this writing no decision has been reached in the case, and it may be as long as two years before the court does reach a decision. In the meantime, the original suit of Ms. Blaubergs based on sex discrimination has been effectively tabled until the contempt of court issue is settled.

Needless to say, there is almost endless controversy over the case itself and over the judge's jailing of Professor Dinnan. Conflicting views in any issue

are always expected, but one might be surprised by the sources of varying arguments. Dr. Jordan Kurland, Chairman, AAUP Committee on Academic Freedom and Tenure [personal conversation, September 11, 1980] stated that he felt the Dinnan argument is too strong; that this is not comparable to the sanctity of the ballot box. In this case, Dr. Dinnan is merely a representative of the University of Georgia and the latter is actually accountable for the actions of the committee. The crux of Dr. Kurland's argument, however, is that if the promotion review committee had issued a semi-public report that was clear, then the AAUP would object if an attempt were made to contact each member as to their vote. But if the committee says very little other than "We do not recommend," AAUP could ask for a divulsion of votes and probably would. Dr. Kurland further explained that if the complainant in an affirmative action case can cite good evidence, then the committee should have to explain their actions. He very strongly felt that the committee did not report in a way that would be considered proper; thus, the strength of Dinnan's case is eroded. Finally, he noted that Ms. Blaubergs' attorney even stated that Dr. Dinnan's testimony is no longer needed to establish a case for her since they have the revelation of the other five committee members who were subpoenaed.

A second AAUP-related opinion comes from Ellen Mattingly, President of the University of Georgia-Athens branch of the AAUP [Mattingly, 1980]. Ms. Mattingly sums up the case thusly:

> Regents' policy on the termination of non-tenured faculty is that no reason for termination is to be given such individuals. The justification for this policy, which is directly contrary to the position of both the national and state American Association of University Professor offices, seems to be an attempt to diminish the probability of lawsuits. Clearly, however, it was only a matter of time before some terminated individual, in the absence of any legal justification for the action, accused the university of illegal motivation, e.g., discrimination on the basis of sex. At this point, the university is faced, not with a defense of a legally acceptable reason but the substantially more difficult problem of proving that there was, in fact, a defensible reason at all, and that the action was not based on discrimination against a female.

She further explains that secret ballot under these circumstances is not the custom at all. According to guidelines of the University of Georgia, the committee is to make a written recommendation on each candidate with a record of each vote and that information is to be part of the promotion dossier. There is not now nor has there ever been any mandate dictating that such tenure decisions must be kept in confidence. Based on Ms. Mattingly's information, it is no wonder that this author was told by Dr. Kurland that the AAUP would take absolutely no stand in the case at this time.

The controversy has only just begun, however. Shanker [1980, p. E7] notes, in a very hard-line attitude:

> Professors who serve on tenure committees already know that the committee's honest judgments about the best people to hire, tenure and promote can produce resentment and recrimination. If the confidentiality of their individual votes is now to be breached, how many will vote on the academic merits of the individual? . . . If they are now to be subject to individual judicial penalties for not telling how they voted--including jail terms and fines--how free will the faculty be to make such judgments solely on the basis of academic distinction, of scholarship and excellent teaching? With the prison warden looking over their shoulder, will they give tenure to the best available Shakespeare teacher, or the one most likely to file suit? Many professors will refuse to serve in such roles if these are the consequences. And those who do serve may vote differently. Since our colleges and universities try to develop quality through a process of faculty screening and selection--peer judgment--the growing reluctance of faculty to serve on such committees or to vote in accordance with excellence may mean that standards will be eroded and eventually destroyed . . . One doesn't have to reach a conclusion about a case that hasn't even yet been tried to understand that the jailing of Dinnan was gratuitous and wrong. We will be feeling the effects at American colleges and universities for years to come, and they won't be in the direction of quality higher education.

As one might imagine, there are many critics of Judge Owens, one of the most notable being Bill Shipp, columnist for the Atlanta Constitution. Mr. Shipp feels that if Judge Owens could order revelation of Dinnan's vote, then he could order any of us to reveal how we voted for president, governor or mayor. The American Council on Education, another staunch defender of Dinnan, stated:

> Informed judgments of the quality of the professional work of teachers and scholars, which are essential to such evaluations, must be made by peers, that is, by other teachers and scholars familiar with the com-

> plexities of academic subject matter and with the intellectual and personal qualities that make effective teachers and scholars . . . Although confidentiality must not be permitted to cloak abuse, a considerable measure of confidentiality is necessary to encourage those making judgments to speak their minds. Within these considerations, the Board of Directors of the American Council on Education views with conern and dismay the fining and jailing of Professor James Andrew Dinnan on July 3, 1980, for contempt of court for refusing to reveal to a civil court his vote in a case involving the denial of tenure to an assistant professor . . . Even without the threat of jail, to hold each individual member liable for the collective judgment of such a committee would effectively destroy a system that has proven its value in protecting the quality of education [Howard, 1980a, pp. 3-4].

Judge Owens also has his supporters, however. Billy Watson, Executive Editor, Macon Telegraph & News, refutes Dinnan's advocates point by point [Watson, 1980]. On the issue of the relevenace of Dr. Dinnan's vote he notes that if the committee violated someone's constitutional rights, then it is necessary to know their votes and rationales. If disclosure of votes was a violation of academic freedom, Watson feels that faculty members could, without ever having to disclose their votes, discriminate without any accountability. He notes that if the press cannot convince the Supreme Court that they do not have to reveal their confidential sources, then surely Dr. Dinnan cannot claim that his vote is privileged information. Watsom sums up his argument by stating, "To their credit, Dr. Dinnan's attorneys did not really try to make the argument, advanced later by him and his supporters, that the secrecy of the ballot box was at stake. There is about as much relation between a vote to promote a faculty member and a vote to elect a public official as there is between an apple and an onion."

Al Pearson [1980] sums up the entire issue when he stated:

> Academic freedom protects faculty members in many important ways. But surely it is not a license to discriminate. In my view, the cause of academic freedom would be better served if Dr. Dinnan and his colleagues could demonstrate they exercised their freedom to judge in a responsible and impartial manner. Dinnan's approach does nothing to dispel the cloud of suspicion raised by Dr. Blaubergs' charges. It is essentially a tactic to win a case. In the final analysis, Dinnan misunderstands and undermines his own case. His incarceration is meaningless.

Finally, Judge Owens, himself, states:

> I know of nothing that offers your professor any hope of keeping secret his actions as a member of the committee whose actions are being challenged on constitutional grounds. I think it's this court's duty and responsibility, unless he has some privilege that is assertable and it appearing it may be relevant, to cause him to answer the question [U.S. District Court, June 2, 1980, p. 8].

Judge Owens concludes the trial by summing up his opinion:

> Academic freedom is something this court cherishes as much as you gentlemen do, and you are striving to continue to protect it. But I think frankly that you construe the term academic freedom to include more than it does include. It doesn't include freedom to deprive any fellow faculty member of his or her constitutional or legal right under the Constitution and laws of the United States. When there is an allegation made that those rights have been violated, this Court then has a duty under the Constitution of the United States and the laws passed by Congress and the procedures that we are all familiar with under which the Court operates to cause an inquiry to be made. If an inquiry could not be made under the guise of academic freedom, professors could discriminate without accountability, could do just anything they want to do, never having to answer to anybody. Academic freedom just does not contemplate a freedom from accounting to others for what you do in non-academic pursuits, and determining personnel policy is a non-academic pursuit . . . I think the Constitution not only fails to give them the right to act in secret but it commands that when their actions are challenged that they, like all other citizens, tell in court what they did and why they did it [U.S. District Court, June 3, 1980, pp. 39-40].

CONCLUSION

The history of tenure, from its modern day inception in 1915, was first given in this paper both to provide a background for the reader and to show the strong role of the American Association of University Professors in the higher education system. The judiciary branches of the United States government have been involved with tenure and academic freedom almost as far back as 1915. But it was only during the last decade that courts were inundated with cases regarding those very crucial issues in higher education. Still, in the over one-hundred cases tried between 1970 and 1979, courts were forced to decide in procedural matters only. Substantive issues remained to be decided within the educational institution itself.

In 1980 there has been a complete reversal of form. In May of this year, Dr. Maija Blaubergs filed an affirmative action suit against the University of

Georgia. U. S. District Court Judge Wilbur D. Owens ruled that if there was a cause for an affirmative action suit, in violation of Title VII of the Civil Rights Act of 1964, then members of the university committee which denied tenure to Dr. Blaubergs would have to reveal their votes and rationales therefore. Dr. James Dinnan refused to do so, was found in contempt of court and sentenced to prison.

To state unequivocally that this is the current legal status of academic freedom and tenure in higher education is imposseble, because that "current" status will continue to change daily. A final decision in the Dinnan case may not be handed down by the United States Court of Appeals for another two years. In the meantime, the original suit of Dr. Blaubergs, based on sex discrimination, has been tabled until the Dinnan issue is resolved. It will likely be several years before that case is brought to court and resolved. Thus, "current status" implies a very transitory state of affairs at this time and probably will so through a good share of the next decade.

What has occurred, however, is a demonstrative reminder that the higher educational system as we know it, is not sacrosanct and immune from the laws of the United States. Higher education has been warned that it can no longer take matters into its own hands and resolve them while either ignoring or circumventing the law. In the face of declining enrollments, severe budgetary cutbacks, mass layoffs, and an oversupply of teachers, one may be assured that those who are part of the higher educational system will be much more inclined now to go through the courts to preserve their rights. The shifting sands of inherent rights within academic freedom and tenure have only just begun to move.

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APPENDIX A

THE 1915 DECLARATION OF PRINCIPLES

A. GENERAL DECLARATION OF PRINCIPLES.

The term "academic freedom" has traditionally had two applications--to the freedom of the teacher and to that of the student. It need scarcely be pointed out that the freedom which is the subject of this report is that of the teacher. Academic freedom in this sense comprises three elements: freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extra-mural utterance and action. The first of these is almost everywhere so safeguarded that the dangers of its infringement are slight. It may therefore be disregarded in this report. The second and third phases of academic freedom are closely related, and are often not distinguished. The third, however, has an importance of its own, since of late it has perhaps more frequently been the occasion of difficulties and controversies than has the question of freedom of intra-academic teaching. All five of the cases which have recently been investigated by committees of this Association have inolved, at least as one factor, the right of university teachers to express their opinions freely outside the university or to engage in political activities in their capacity as citizens. The general principles which have to do with freedom of teaching in both these senses seem to the committee to be in great part, though not wholly, the same. In this report, therefore, we shall consider the matter primarily with reference to freedom of teaching within the university, and shall assume that what is said thereon is also applicable to the freedom of speech of university teachers outside their institutions, subject to certain qualifications and supplementary considerations which will be pointed out in the course of the report.

An adequate discussion of academic freedom must necessary consider three matters: (1) the scope and basis of the power exercised by those bodies having ultimate legal authority in academic affairs; (2) the nature of the academic calling; (3) the function of the academic institution or university.

Basis of Academic Authority

American institutions of learning are usually controlled by boards of trustees as the ultimate repositories of power. Upon them finally it devolves tto determine the measure of academic freedom which is to be realized in the several institutions. It therefore becomes necessary to inquire into the nature of the trust reposed in these boards and to ascertain to whom the trustees are to be considered accountable.

The simplest case is that of the proprietary school or college designed for the propagation of specific doctrines prescribed by those who have furnished its endowment. It is evident that in such cases the trustees are bound by the deed of gift, and whatever be their own views are obligated to carry out the terms of the trust. If a church or religious denomination establishes a college to be governed by a board of trustees, with the express understanding that the college will be used as an instrument of propaganda in the interests of the religious faith professed by the church or denomination creating it, the trustees have a right to demand that everything be subordinated to that end. If, again, as has happened in this country, a wealthy manufacturer establishes a special school in a university in order to teach, among other things, the advantages of a protective tariff, or if, as is also the case, an institution has been endowed for the

purpose of propagating the doctrines of socialism, the situation is analogous. All of these are essentially proprietary institutions, in the moral sense. They do not, at least as regards one particular subject, accept the principles of freedom of inquiry, of opinion, and of teaching; and their purpose is not to advance knowledge by the unrestricted research and unfettered discussion of impartial investigators, but rather to subsidize the promotion of the opinions held by the persons, usually not of the scholar's calling, who provide the funds for their maintenance. Concerning the desirability of the existence of such institutions, the committee does not desire to express any opinion. But it is manifestly important that they should not be permitted to sail under false colors. Genuine boldness and thoroughness of inquiry, and freedom of speech, are scarcely reconcilable with the prescribed inculcation of a particular opinion upon a controverted question.

Such institutions are rare, however, and are becoming every more rare. We still have, indeed, colleges under denominational auspices; but very few of them impose upon their trustees responsibility for the spread of specific doctrines. They are more and more coming to occupy, with respect to the freedom enjoyed by the members of their teaching bodies, the position of untrammeled institutions of learning, and are differentiated only by the natural influence of their respective historic antecedents and traditions.

Leaving aside, then, the small number of institutions of the proprietary type, what is the nature of the trust reposed in the governing boards of the ordinary institutions of learning? Can colleges and universities that are not strictly bound by their founders to a propagandist duty every be included in the class of institutions that we have just described as being in a moral sense proprietary? The answer is clear. If the former class of institutions constitute a private or proprietary trust, the latter constitute a public trust. The trustees are trustees for the public. In the case of our state universities, this is self-evident. In the case of most of our privately endowed institutions, the situation is really not different. They cannot be permitted to assume the proprietary attitude and privilege, if they are appealing to the general public for support. Trustees of such universities or colleges have no moral right to bind the reason or the conscience of any professor. All claim to such right is waived by the appeal to the general public for contributions and for moral support in the maintenance, not of a propaganda, but of a nonpartisan institution of learning. It follows that any university which lays restrictions upon the intellectual freedom of its professors proclaims itself a proprietary institution, and should be so described whenever it makes a general appeal for funds; and the public should be advised that the institution has no claim whatever to general support or regard.

This elementary distinction between a private and public trust is not yet so universally accepted as it should be in our American institutions. While in many universities and colleges the situation has come to be entirely satisfactory, there are others in which the relation of trustees to professors is apparently still conceived to be analogous to that of a private employer to his employees; in which, therefore, trustees are not regarded as debarred by any moral restrictions, beyond their own sense of expediency, from imposing their personal opinions upon the teaching of the institution, or even from employing the power of dismissal to gratify their private antipathies or resentments. An eminent university president thus described the situation not many years since:

> In the institutions of higher education the baord of trustees is the body on whose discretion, good feeling, and experience the securing of academic freedom now depends. There are boards which leave nothing to be desired in these respects; but there are also numerous bodies that have everything to learn with regard to academic freedom. These barbarous boards exercise an arbitrary power of dismissal. They exclude from the teachings of the university unpopular or dangerous subjects. In some states they even treat professors' positions as common political spoils; and all too frequently, both in state and endowed institutions, they fail to treat the members of the teaching staff with that high consideration to which their functions entitle them. [From "Academic Freedom" an address delivered at Cornell University by Hard University President, Charles William Eliot, May 29, 1907]

It is then a prerequisite to a realization of the proper measure of academic freedom in American institutions of learning, that all boards of trustees should understand--as many already do--the full implications of the distinction between private proprietorship and a public trust.

The Nature of the Academic Calling

The above-mentioned conception of a university as an ordinary business venture, and of academic teaching as a purely private employment, manifests also a radical failure to apprehend the nature of the social function discharged by the professional scholar. While we should be reluctant to believe that any large number of educated persons suffer from such a misapprehension, it seems desirable at this time to restate clearly the chief reasons, lying in the nature of the university teaching profession, why it is to the public interest that the professional office should be one both of dignity and of independence.

If education is the cornerstone of the structure of society and if progress in scientific knowledge is essential to civilization, few things can be more important than to enhance the dignity of the scholar's profession, with a view to attracting into its ranks men of the highest ability, of sound learning, and of strong and independent character. This is the more essential because the pecuniary emoluments of the profession are not, and doubtless never will be, equal to those open to the more successful members of other professions. It is not, in our opinion, desirable that men should be drawn into this profession by the magnitude of the economic rewards which it offers; but it is for this reason the more needful that men of high gifts and character should be drawn into it by the assurance of an honorable and secure position, and of freedom to perform honestly and according to their own consciences the distinctive and important function which the nature of the profession lays upon them,

That function is to deal at first hand, after prolonged and specialized technical training, with the sources of knowledge; and to impart the results of their own and of their fellow specialists' investigation and reflection, both to students and to the general public, without fear or favor. The proper discharge of this function requires (among other things) that the university teacher shall be exempt from any pecuniary motive or inducement to hold, or to express, any conclusion which is not the genuine and uncolored product of his own study or that of fellow specialists. Indeed, the proper fulfillment of the work of the professoriate requires that our universities shall be so free that no fair minded person shall find any excuse for even a suspicion that the utterances of

university teachers are shaped or restricted by the judgment, not of professional scholars, but of inexpert and possibly not wholly disinterested persons outside of their ranks. The lay public is under no compulsion to accept or to act upon the opinions of the scientific experts whom, through the universities, it employs. But it is highly needful, in the interest of society at large, that what purport to be the conclusion of men trained for, and dedicated to, the quest for truth, shall in fact be the conclusions of such men, and not echoes of the opinions of the lay public, or of the individuals who endow or manage universities. To the degree that professional scholars, in the formation and promulgation of their opinions, are, or by the character of their tenure appear to be, subject to any motive other than their own scientific conscience and a desire for the respect of their fellow experts, to that degree the university teaching profession is corrupted; its proper influence upon the public opinions is diminished and vitiated; and society fails to get from its scholars, in an unadulterated form, the peculiar and necessary service which it is the office of the professional scholar to furnish.

These considerations make still more clear the nature of the relationship between university trustees and members of university faculties. The latter are the appointees, but not in any proper sense the employees, of the former. For, once appointed, the scholar as professional functions to perform in which the appointing authorities have neither competency nor moral right to intervene. The responsibility of the university teacher is primarily to the public itself, and to the judgment of his own profession; and while, with respect to certain external conditions of his vocation, he accepts a responsibility to the authorities of the institution in which he serves, in the essentials of his professional activity his duty is to the wider public to which the institution itself is morally amenable. So far as the university teacher's independence of thought and utterance is concerned--though not in other regards--the relationship of professor to trustees may be compared to that between judges of the Federal courts and the Executive who appoints them. University teachers should be understood to be, with respect to the conclusions reached and expressed by them, no more subject to the control of the trustees than are judges subject to the control of the President with respect to their decisions; while of course, for the same reason, trustees are no more to be held responsible for, or to be presumed to agree with, the opinions or utterances of professors than the President can be assumed to approve all the legal reasonings of the courts. A university is a great and indispensable organ of the higher life of a civilized community, in the owrk of which the trustees hold an essential and highly honorable place, but in which the faculties hold an independent place, with quite equal responsibilities--and in relation to purely scientific and educational questions, the primary responsibility. Misconception or obscurity in this matter has undoubtedly been a source of occasional difficulty in the past, and even in several instances during the current year, however much, in the main, a long tradition of kindly and courteous intercourse between trustees and members of university faculties has kept the question in the background.

The Function of the Academic Institution

The importance of academic freedom is most clearly perceived in the light of the purposes for which universities exist. These are three in number: (A) To promote inquiry and advance the sum of human knowledge; (B) To provide general instruction to the students; (C) To develop experts for various branches of the public service.

Let us consider each of these. In the earlier stages of a nation's intellectual

development, the chief concern of educational institutions is to train the growing generation and to diffuse the already accepted knowledge. It is only slowly that there comes to be provided in the highest institutions of learning the opportunity for the gradual wresting fromnature of her intimate secrets. The modern university is becoming more and more the home of scientific research. There are three fields of human inquiry in which the race is only at the beginning: natural science, social science, and philosophy and religion, dealing with the relations of man to outer nature, to his fellowmen, and to ultimate realities and values. In natural science all that we have learned but serves to make us realize more deeply how much more remains to be discovered. In social science in its largest sense, which is concerned with the relations of men in society and with the conditions of social order and well being, we have learned only an adumbration of the laws which govern these vastly complex phenomena. Finally, in the spiritual life, and the interpretation of the general meaning and ends of human existence and its relation to the universe, we are still far from a comprehension of the final truths, and from a universal agreement among all sincere and earnest men. In all of these domains of knowledge, the first condition of progress is complete and unlimited freedom to pursue inquiry and publish its results. Such freedom is the breath in the nostrils of all scientific activity.

The second function--which for a long time was the only function--of the American college or university is to provide instruction for students. It is scarcely open to question that freedom of utterance is as important to the teacher as it is to the investigator. No man can be a successful teacher unless he enjoys the respect of his students, and their confidence in his intellectual integrity. It is clear, however, that this confidence will be impaired if there is suspicion on the part of the student that the teacher is not expressing himself fully or frankly, or that college and university teachers in general are a repressed and intimidated class who dare not speak with that candor and courage which youth always demands in those whom it is to esteem. The average student is a discerning observer, who soon takes the measure of his instructor. It is not only the character of the instruction but also the character of the instructor that counts; and if the student has reason to believe that the instructor is not true to himself, the virtue of the instruction as an educative force is incalculably diminished. There must be in the mind of the teacher no mental reservation. He must give the student the best of what he has and what he is.

The third function of the modern university is to develop experts for the use of the community. If there is one thing that distinguishes the more recent developments of democracy, it is the recognition by legislators of the inherent complexities of economic, social, and political life, and the difficulty of solving problems of technical adjustment without technical knowledge. The recognition of this fact has led to a continually greater demand for the aid of experts in these subjects, to advise both legislators and administrators. The training of such experts has, accordingly, in recent years, become an important part of work of the universities; and in almost every one of our of our higher institutions of learning, the professors of the economic, social, and political sciences have been drafted to an increasing extent into more or less unofficial participation in the public service. It is obvious that here again the scholar must be absolutely free not only to pursue his investigations but to declare the results of his researches, no matter where they may lead him or to what extent they may come into conflict with accepted opinion. To be of use to the legislator or the administrator, he must enjoy their complete confidence in the disinterestedness of his conclusions.

It is clear, then, that the university cannot perform its threefold function wtihout accepting and enforcing to the fullest extent the principle of academic

freedom. The responsibility of the university as a whole is to the community at large, and any restriction upon the freedom of the instructor is bound to react injuriously upon the efficiency and the morale of the institution, and therefore ultimately upon the interests of the community.

The attempted infringements of academic freedom at present are probably not only of less frequency than, but of a different character from, those to be found in former times. In the early period of university development in America the chief menace to academic freedom was ecclesiastical, and the disciplines chiefly affected were philosophy and the natural sciences. In more recent times the danger zone has been shifted to the political and social sciences--though we still have sporadic examples of the former class of cases in some of our smaller institutions. But it is precisely in these provinces of knowledge in which academic freedom is now most likely to be threatened, that the need for it is at the same time most evident. No person of intelligence believes that all of our political problems have been solved, or that the final stage of social evolution has been reached. Grave issues in the adjustment of men's social and economic relations are certain to call for settlement in the years that are to come; and for the right settlement of them mankind will need all the wisdom, all the good will, all the soberness of mind, and all the knowledge drawn from experience that it can command. Toward this settlement the university has potentially its own very great contribution to make; for if the adjustment reached is to be a wise one, it must take due account of economic science, and be guided by that breadth of historic vision which it should be one of the functions of a university to cultivate. But if the universities are to render any such service toward the right solution of the social problems of the future, it is the first essential that the scholars who carry on the work of universities shall not be in a position of dependence upon the favor of any social class or group, that the disinterestedness and impartiality of their inquiries and their conclusions shall be, so far as is humanly possible, beyond the reach of suspicion.

The special dangers to freedom of teaching in the domain of the social sciences are evidently two. The one which is the more likely to affect the privately endowed colleges and universities is the danger of restrictions upon the expression of opinions which point toward extensive social innovations, or call in question the moral legitimacy or social expediency of economic conditions or commercial practices in which large vested interests are involved. In the political, social, and economic field almost every question, no matter how large and general it at first appears, is more or less affected with private or class interests; and, as the governing body of a university is naturally made up of men who through their standing and ability are personally interested in great private enterprises, the points of possible conflict are numberless. When to this is added the consideration that benefactors, as well as most of the parents who send their children to privately endowed institutions, themselves belong to the more prosperous and therefore usually to the more conservative classes, it is apparent that, so long as effectual safeguards for academic freedom are not established, there is a real danger that pressure from vested interests may, sometimes deliberately and sometimes unconsciously, sometimes openly and sometimes subtly and in obscure ways, be brought to bear upon academic authorities.

On the other hand, in our state universities the danger may be the reverse. Where the university is dependent for funds upon legislative favor, it has sometimes happened that the conduct of the institution has been affected by political considerations; and where there is a definite governmental policy or a strong public feeling on economic, social, or political questions, the menace to

academic freedom may consist in the repression of opinions that in the particular political situation are deemed ultra-conservative rather than ultra-radical. The essential point, however, is not so much that the opinion is of one or another shade, as that it differs from the views entertained by the authorities. The question resolves itself into one of departure from accepted standards; whether the departure is in the one direction or the other is immaterial.

This brings us to the most serious difficulty of this problem; namely, the dangers connected with the existence in a democracy of an overwhelming and concetrated public opinion. The tendency of modern democracy is for men to think alike, to feel alike, and to speak alike. Any departure from the conventional standards is apt to be regarded with suspicion. Public opinion is at once the chief safeguard of a democracy, and the chief menace to the real liberty of the individual. It almost seems as if the danger of despotism cannot be wholly averted under any form of government. In a political autocracy there is no effective public opinion, and all are subject to the tyranny of the ruler; in a democracy there is political freedom, but there is likely to be a tyranny of public opinion.

An inviolable refuge from such tyranny should be found in the university. It should be an intellectual experiment station, where new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen until finally, perchance, it may become a part of the accepted intellectual food of the nation of the world. Not less is it a distinctive duty of the university to be the conservator of all genuind elements of value in the past thought and life of mankind which are not in fashion of the moment. Though it need not be the "home of beaten causes," the university is, indeed, likely always to exercise a certain form of conservative influence. For by its nature it is committed to the principle that knowledge should precede action, to the caution (by no means synonymous with intellectual timidity) which is an essential part of the scientific method, to a sense of the complexity of social problems, to the practice of taking long views into the future, and to a reasonable regard for the teachings of experience. One of its most characteristic functions in a democratic society is to help make public opinion more self-critical and more circumspect, to check the more hasty and unconsidered impulses of popular feeling, to train the democracy to the habit of looking before and after. It is precisely this function of the university which is most injured by any restriction upon academic freedom; and it is precisely those who most value this aspect of the university's work who should most earnestly protest against any such restriction. For the public may respect, and be influenced by, the counsels of prudence and of moderation which are given by men of science, if it believes those counsels to be the disinterested expression of the scientific temper and of unbiased inquiry. It is little likely to respect or heed them if it has reason to believe that they are the expression of the interests, or the timidities, of the limited portion of the community which is in a position to endow institutions of learning. And a plausible reason for this belief is given the public so long as our universities are not organized in such a way as to make impossible any exercise of pressure upon professional opinions and utterances by governing boards of laymen.

Since there are no rights without corresponding duties, the considerations heretofore set down with respect to the freedom of the academic teacher entail certain correlative obligations. The claim to freedom of teaching is made in the interest of the integrity and of the progress of scientific inquiry; it is, therefore, only those who carry on their work in the temper of the scientific inquirer who may justly assert this claim. Theliberty of the scholar within the university

to set forth his conclusions gained by a scholar's method and held in a scholar's spirit, that is to say, they must be the fruits of competent and patient and sincere inquiry, and they should be set forth with dignity, courtesy, and temperateness of language. The university teacher, in giving instruction upon controversial matters, while he is under no obligation to hide his own opinion under a mountain of equivocal verbiage, should, if he is fit for his position, be a person of a fair and judicial mind; he should in dealing with such subjects set forth justly, without suppression or innuendo, the divergent opinions of other investigators; he should cause his students to become familiar with the best published expressions of the great historic types of doctrine upon the questions at issue; he should, above all, remember that his business is not to provide his students with ready made conclusions, but to train them to think for themselves, and to provide them access to those materials which they need if they are to think intelligently.

It is, however, for reasons which have already been made evident, inadmissable that the power of determining when departures from the requirements of the scientific spirit and method have occurred, should be vested in bodies not composed of members of the academic profession. Such bodies necessarily lack full competency to judge of those requirements; their intervention can never be exempt from the suspicion that it is dictated by other motives than zeal for the integrity of science; and it is, in any case, unsuitable to the dignity of a great profession that the initial responsibility for the maintenance of its professional standards should not be in the hands of its own members. It follows that university teachers must be prepared to assume this responsibility for themselves. They have hitherto seldom had the opportunity, or perhaps the disposition, to do so. The obligation will doubtless, therefore, seem to many as an unwelcome and burdensome one; and for its proper discharge members of the profession will perhaps need to acquire, in a greater measure than they at present possess it, the capacity for impersonal judgment in such cases, and for judicial severity when the occasion requires it. But the responsibility cannot, in this committee's opinion, be rightfully evaded. If this profession should prove itself unwilling to purge its ranks of the incompetent and the unworthy, or to prevent the freedom which it claims in the name of science from being used as a shelter for inefficiency, for superficiality, or for uncritical and intemperate partisanship, it is certain that the task will be performed by others--by others who lack certain essential qualifications for performing it, and whose action is sure to breed suspicions and recurrent controversies deeply injurious to the internal order and the public standing of unviersities. Your committee has, therefore, in the appended Practical Proposals attempted to suggest means by which judicial action by representatives of the profession with respect to the matters here referred to, may be secured.

There is one case in which the academic teacher is under an obligation to observe certain special restraints--namely, the instruction of immature studetns. In many of our American colleges, and especially in the first two years of the course, the student's character is not yet fully formed, his mind is still relatively immature. In these circumstances it may reasonably be expected that the instructor will present scientific truth with discretion, that he will introduce the student to new conceptions graduatlly, with some consideration for the student's preconceptions and traditions, and with due regard to character building. The teacher ought also to be especially on his guard against taking unfair advantage of the students' immaturity by indoctrinating him with the teacher's own opinions before the student has had an opportunity farily to examine other opinions upon the matters of question, and before he has sufficient knowledge and ripeness in judgment to be entitled to form any definitive opinion of his own. It is not the least service which a college or university may render to those under its instruction, to habituate them to looking not only patiently but methodically on

both sides, before adopting any conclusion upon controverted issues. By these suggestions, however, it need scarcely be said that the committee does not intend to imply that it is not the duty of an academic instructor to give any students old enough to be in college a genuine intellectual awakening and to arounse in them a keen desire to reach personally verified conclusions upon all questions of general concernment to mankind, or of special significance for their own time. There is much truth in some remarks recently made in this connection by a college president [William Foster, Reed College, 1915]:

> Certain professors have been refused re-election lately, apparently because they set their students to thinking in ways objectionable to the trustees. It would be well if more teachers were dismissed because they fail to stimulate thinkinf of any kind. We can afford to forgive a college professor what we regard as the occasional error of his doctrine, especially as we may be wrong, provided he is a contagious center of intellectual enthusiasm. It is better for students to think about heresies than not to think at all; better for them to climb new trails and stumble over error if need be, than to ride forever in upholstered ease in the overcrowded highway. It is a primary duty of a teacher to make a student take an honest account of his stock of ideas, throw out the dead matter, place revised price marks on what is left, and try to fill his empty shelves with new goods.

It is, however, possible and necessary that such intellectual awakening be brought about with patience, considerateness and pedagogical wisdom.

There is one further consideration with regard to the classroom utterances of college and university teachers to which the committee thinks it important to call the attention of members of the profession, and of administrative authorities. Such utterances ought always to be considered privileged communications. Discussions in the classroom ought not to be supposed to be utterances for the public at large. They are often designed to provoke opposition or arouse debate. It has, unfortunately, sometimes happened in this country that sensational newspapers have quoted and garbled such remarks. As a matter of common law, it is clear that the utterances of an academic instructor are privileged, and may not be published, in whole or in part, without his authorization. But our practice, unfortunately, still differs from that of foreign countries, and no effective check has in this country been put upon such unauthorized and often misleading publication. It is much to be desired that test cases should be made of any infractions of the rule.

In their extramural utterances, it is obvious that academic teachers are under a peculiar obligation to avoid hasty or unverified or exaggerated statements, and to refrain from intemperate or sensational modes of expression. But subject to these restraints, it is not, in this committee's opinion, desirable that scholars should be debarred from giving expression to their judgments upon controversial questions, or that their freedom of speech, outside the university should be limited to questions falling within their own specialties. It is clearly not proper that they should be prohibited from lending their active support to organized movements which they believe to be in the public interest. And, speaking broadly, it may be said in the words of a nonacademic body already once quoted in publication of the Association, that "It is neither possible nor desirable to deprive a college professor of the political rights vouchsafed to every citizen."

It is, however, a question deserving of consideration by members of this Association, and by university officials, how far academic teachers, at least those

dealing with political, economic, and social subjects, should be prominent in the management of our great party organizations, or should be candidates for state or national offices of a distinctly political character. It is manifestly desirable that such teachers have minds untrammeled by party loyalties, unexcited by party enthusiasms, and unbiased by personal political ambitions; and that universities should remain uninvolved in party antagonisms. On the other hand, it is equally manifest that the material available for the service of the State would be restricted in a highly undesirable way, if it were understood that no member of the academic profession should ever be called upon to assume the responsibilities of public office. This question may, in the committee's opinion, suitably be made a topic for special discussion at somefuture meeting of this Association, in order that a practical policy, which shall do justice to the two partially conflicting considerations that bear upon the matter, may be agreed upon.

It is, it will be seen, in no sense the contention of this committee that academic freedom implies that individual teachers should be exempt from all restraints as to the matter or manner of their utterances, either within or without the university. Such restraints as are necessary should in the main, your committee holds, be self-imposed, or enforced by the public opinion of the profession. But there may, undoubtedly, arise occasional cases in which the aberrations of individuals may require to be checked by definite disciplinary action. What this report chiefly maintains is that such action cannot with safety be taken by bodies not composed of members of the academic profession. Lay governing boards are competent to judge concerning charges of habitual neglect of assigned duties, on the part of individual teachers, and concerning charges of grave moral delinquency. But in matters of opinion, and of the utterance of opinion, such boards cannot intervene without destroying, to the extent of their intervention, the essential nature of a university--without converting it from a place dedicated to openness of mind, in which the conclusions expressed are the tested conclusions of trained scholars, into a place barred against the access of new light, and precommitted to the opinions or prejudices of men who have not been set apart or expressly trained for the scholar's duties. It is, in short, not the absolute freedom of thought, of inquiry, of discussion, and of teaching, of the academic profession, that is asserted by this declaration of principles. It is conceivable that our profession may prove unworthy of its high calling, and unfit to exercise the responsibilities that belong to it. But it will scarcely be said as yet to have given evidence of such unfitness. And the existence of this Association, as it seems to your committee, must be construed as a pledge, not only that the profession will earnestly guard those liberties without which it cannot rightly render its distinctive and indispensable service to society, but also that it will with equal earnestness seek to maintain such standards of professional character, and of scientific integrity and competency, as shall make it a fit instrument for that service.

B. PRACTICAL PROGRAMS.

As the foregoing declaration implies, the ends to be accomplished are chiefly three:

1. To safeguard freedom of inquiry and of teaching against both covert and overt attacks, by providing suitable judicial bodies, composed of members of the academic profession, which may be called into action before university teachers are fired or disciplined, and may determine in what cases the question of academic freedom is actually involved.

2. By the same means, to protect college executives and governing boards against unjust charges of infringement of academic freedom, or of arbitrary and dictatorial conduct--charges which, when they gain wide currency and belief, are highly detrimental to the good repute and the influence of universities.

3. To render the profession more attractive to men of high ability and strong personality by insuring the dignity, the independence, and the reasonable security of tenure, of the professorial office.

The measures which it is believed to be necessary for our universities to adopt to realize these ends--measures which have already been adopted in part by some institutions, are four:

Action by faculty committees on reappointments. Official action relating to reappointments and refusals of reappointment should be taken only with the advice and consent of some board or committee representative of the faculty. Your committee does not desire to make at this time any suggestion as to the manner of selection of such boards.

Definition of tenure of office. In every institution there shoul be an unequivocal understanding as to the term of each appointment; and the tenure of professorships and associate professorships, and of all positions above the grade of instructor after ten years of service, should be permanent (subject to the provisions hereinafter given for removal upon charges). In those state universities which are legally incapable of making contracts for more than a limited period, the governing boards should announce their policy with respect to the presumption of rea-pointment in the several classes of position, and such announcements, though not legally enforceable, should be regarded as morally binding. No university teacher of any rank should, except in cases of grave moral delinquency, receive notice of dismissal or of refusal of reappointment, later than three months before the close of the academic year, and in the cases of teachers above the grade of instructor, one year's notice should be given.

Formulation of grounds for dismissal. In every institution the grounds which will be regarded as justifying the dismissal of members of the faculty should be formulated with reasonable definteness; and in the case of institutions which impose upon their faculties doctrinal standards of a sectarian or partisan character, these standards should be clearly defined and the body or individual having authority to interpret them, in case of controversy, should be designated. Your committee does not think it best at this time to attempt to enumerate the legitimate grounds for dismissal, believing it to be preferable that individual institutions should take the initiative in this.

Judicial hearings before dismissal. Every university or college teacher should be entitled, before dismissal or demotion, to have the charges against him stated in writing in specific terms and to have a fair trial on those charges before a special or permanent judicial committee chosen by the faculty senate or council, or by the faculty at large. At such trial the teacher accused should have full opportunity to to present evidence, and if the charge is one of professional incompetency, a formal report upon his work should be first made in writing by the teachers of his own department and of cognate departments in the university, and, if the teacher concerned so desires, by a committee of his fellow specialists from other institutions, appointed by some competent authority.

The above declaration of principles and practical proposals are respectfully submitted by your committee to the approval of the Association, with the suggestion that, if approved, they be recommended to the consideration of the faculties, administrative officers and governing boards of the American universities and colleges.

APPENDIX B

1940 STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE

The purpose of this statement is to promote public understnding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher edcuation are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.

Tenure is a means to certain ends; specifically: (1) Freedom of teaching and research and of extramural activities and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

Academic Freedom

A. The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

B. The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

C. The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from the institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

Academic Tenure

A. After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle, it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in

writing and be in the possession of both institution and teacher before the appointment is consummated.

2. Beginning with appointment to the rank of full time instructor or a higher rank, the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution is may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior tc the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.

3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have.

4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher, previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges against him and should have the opportunity to be heard in hiw own defense by all bodies that pass judgment in his case. He should be permitted to have with him an adviser of his own choosing, who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence, the testimony should include that of teachers and other scholars, either from his own of from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.

5. Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

Interpretations

At the conference of representatives of the AAUP and of the Association of American Colleges on November 7-8, 1940, the following interpretations of the 1940 Statement were agreed upon:

1. That its operation should not be retroactive.

2. That all tenure claims of teachers appointed prior to the endorsement should be determined in accordance with the principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure.

3. If the administration of a college or university feels that a teacher has not observed the admonitions of Paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning his fitness for his position, it may proceed to file charges under Paragraph (a)(4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility and the AAUP and the AAC are free to make an investigation.

APPENDIX C

1958 STATEMENT ON PROCEDURAL STANDARDS IN FACULTY DISMISSAL PROCEEDINGS

1. Preliminary proceedings concerning the fitness of a faculty member. When reason arises to question the fitness of a college or university faculty member who has tenure or whose term appointment has not expired, the appropriate administrative officers should ordinarily discuss the matter with him in personal conference. The matter may be terminated by mutual consent at this point, but if an adjustment does not result, a standing or ad hoc committee elected by the faculty and charged with the function of rendering confidential advice in such situations should informally inquire into the situation, to effect an adjustment if possible and, if none is effected, to determine whether in its view formal proceedings to consider his dismissal should be instituted. If the committee recommends that such proceedings should be begun, or if the president of the institution, even after considering a recommendation of the committee favorable to the faculty member, expresses his conviction that a proceeding should be undertaken, action should be commenced under the procedures which follow. Except where there is disagreement, a statement with reasonable particularity of the grounds proposed for the dismissal should then be jointly formulated by the president and the faculty committee; if there is disagreement, the president or his representative should formulate the statement.

2. Commencement of formal proceedings. The formal proceedings should be commenced by a communication addressed to the faculty member by the president of the institution, informing the faculty member of the statement formulated, and informing him that, if he so requests, a hearing to determine whether he should be removed from his faculty position on the grounds stated will be conducted by a faculty committee at a specified time and place. In setting the date of the hearing, sufficient time should be allowed the faculty member to prepare his defense. The faculty member should be informed, in detail or by reference to published regulations, of the procedural rights that will be accorded to him. The faculty member should state in reply whether he wishes a hearing and, if so, should answer in writing, not less than one week before the date set for the hearing, the statements in the president's letter.

3. Suspension of the faculty member. Suspension of the faculty member during the proceedings involving him is justified only if immediate harm to himself or others is threatened by his continuance. Unless legal considerations forbid, any such suspension should be with pay.

4. Hearing committee. The committee of faculty members to conduct the hearing and reach a decision should either be an elected standing committee not previously concerned with the case or a committee established as soon as possible after the president's letter to the faculty member has been set. The choice of members of the hearing committee should be on the basis of their objectivity and competence and of the regard in which they are held in the academic community. The committee should elect its own chairman.

5. Committee proceeding. The committee should proceed by considering the statement of grounds for dismissal already formulated, and the faculty member's response written before the time of the hearing. If the faculty member has not yet requested a hearing, the committee should consider the case on the basis of the obtainable information and decide whether he should be removed; otherwise the hearing should go forward. The committee, in consultation with the president

and the faculty member, should exercise its judgment as to whether the hearing should be public or private. If any facts are in dispute, the testimony of witnesses and other evidence concerning the matter set forth in the president's letter to the faculty member should be received.

The president should have the option of attendance during the hearing. He may designate an appropriate representative to assist in developing the case; but the committee should determine the order of proof, should normally conduct the questioning of witnesses, and, if necessary, should secure the presentation of evidence important to the case.

The faculty member should have the option of assistance by counsel, whose functions should be similar to those of the representative chosen by the president. The faculty member should have the additional procedural rights set forth in the 1940 Statement, and should have the aid of the committee, when needed, in securing the attendance of witnesses. The faculty member or his counsel and the representative designated by the president should have the right, within reasonable limits, to question all witnesses who testify orally. The faculty member should have the opportunity to be confronted by all witnesses adverse to him. Where unusual and urgent reasons move the hearing committee to withhold this right, or where the witness cannot appear, the identity of the witness, as well as his statements, should nonetheless be disclosed to the faculty member. Subject to these safeguards, statements may when necessary be taken outside the hearing and reported to it. All of the evidence should be duly recorded. Unless special circumstances warrant, it should not be necessary to follow formal rules of court procedure.

6. Consideration by hearing committee. The committee should reach its decision in conference, on the basis of the hearing. Before doing so, it should give opportunity to the faculty member or his counsel and the representative designated by the president to argue orally before it. If written briefs would be helpful, the committee may request them. The committee may proceed to decision promptly, without having the record of the hearing transcribed where it feels that a just decision can be reached by this means; ot it may await the availability of a transcript of the hearing if its decision would be aided thereby. It should make explicit findings with respect to each of the grounds of removal presented, and a reasoned opinion may be desirable. Publicity concerning the committee's decision may properly be withheld until consideration has been given to the case by the governing body of the institution. The president and the faculty member should be notified of the decision in writing and should be given a copy of the record of the hearing. Any release to the public should be made through the president's office.

7. Consideration by the governing body. The president should transmit to the governing body the full report of the hearing committee, stating its action. On the assumption that the governing board has accepted the principle of the faculty hearing committee, acceptance of the committee's decision would normally be expected. If the governing body chooses to review the case, its review should be based on the record of the previous hearing, accompanied by opportunity for argument, oral or written or both, by the principals at the hearing or their representatives. The decision of the hearing committee should either be sustained or the proceeding be returned to the committee with objections specified. In such a case, the committee should reconsider, taking account of the stated objections and receiving new evidence if necessary. It should frame its decision and communicate it in the same manner as before. Only after study of the committee's reconsideration should the governing body make a final decision overruling the committee.

8. Publicity. Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements about the case either by the faculty member or administrative officers should be avoided as far as possible until the proceedings have been completed. Announcement of the final decision should include a statement of the hearing committee's original action, if this has not previously been made known.

APPENDIX D

Chapter IV
Academic Freedom and Tenure: Other Statements

Academic Freedom and Tenure in the Quest for National Security: [1956] Report of a Special Committee, [Second Section] Relevant General Principles [and] a [1958] Statement of the Committee on Academic Freedom and Tenure, Supplementary. . . .

A special committee, appointed by authority of the Council in 1955, presented the following report to the Council in 1956. The second section of the report, "Relevant General Principles," was adopted by the Council as its own statement, and these principles were then adopted by the 1956 Annual Meeting. A preceding section was introductory in nature and a following section presented a record of particular events and a group of specific recommendations.

Subsequent to the 1956 adoption of the "Relevant General Principles" of the report of the special committee, Committee A spent much time in an effort to clarify the position to be defended when a faculty member refuses to make disclosures to his own institution. The result, printed in the Spring, 1958, issue of the *AAUP Bulletin,* was "A Statement of the Committee on Academic Freedom and Tenure, Supplementary to the 1956 Report, 'Academic Freedom and Tenure in the Quest for National Security' "; this statement is printed here immediately following the 1956 "Relevant General Principles."

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1. The justification of academic freedom

The maintenance of freedom of speech, publication, religion, and assembly (each of which is a component of intellectual freedom) is the breath of life of a democratic society. The need is greatest in fields of higher learning, where the use of reason and the cultivation of the highest forms of human expression are the basic methods. To an increasing extent, society has come to rely upon colleges and universities as a principal means of acquiring

new knowledge and new techniques, of conveying the fruits of past and present learning to the community, and of transmitting these results to generations to come. Without freedom to explore, to criticize existing institutions, to exchange ideas, and to advocate solutions to human problems, faculty members and students cannot perform their work, cannot maintain their self-respect. Society suffers correspondingly. The liberty that is needed requires a freedom of thought and expression within colleges and universities, a freedom to carry the results of honest inquiry to the outside, and a freedom to influence human affairs in the same manner as other informed and unprejudiced persons do. Nor is the value of freedom lessened because error at times arises from its exercise. Learning, intellectual development, and social and scientific progress take place on a trial-and-error basis, and even the unsound cause or hypothesis may call forth the truth that displaces it. The error of one scholar has, indeed, stimulated others to discover the correcting truth.

The demand we of the academic world make for academic freedom is not made primarily for our own benefit. We enjoy the exercise of freedom; but the purposes of liberty lie, in a democracy, in the common welfare. It has recently been said, "With regard to some occupations, it is eminently in the interest of society that the men concerned speak their minds without fear of retribution. . . . The occupational work of the vast majority of people is largely independent of their thought and speech. The professor's work *consists* of his thought and speech. If he loses his position for what he writes or says, he will, as a rule, have to leave his profession, and may no longer be able effectively to question and challenge accepted doctrines or effectively to defend challenged doctrines. And if *some* professors lose their positions for what they write or say, the effect on many other professors will be such that their usefulness to their students and to society will be gravely reduced."[1]

We ask, then, for the maintenance of academic freedom and of the civil liberties of scholars, not as a special right, but as a means whereby we may make our appointed contribution to the life of the

[1] Fritz Machlup, "On Some Misconceptions Concerning Academic Freedom," *AAUP Bulletin*, 41:753–84 (Winter, 1955).

commonwealth and share equitably, but not more than equitably, in the American heritage. Society has the power to destroy or impair this freedom; but it cannot do so and retain the values of self-criticism and originality fostered by higher education. Again, in the words of the Princeton University Chapter:

> The spirit of free inquiry is not a privilege claimed for a single profession, but the touchstone of our character as a people, the proved source of our national strength. Its defilement in any area of our society is a threat to the entire body politic. . . .
>
> As teachers, loyal to the country and to the ideal of free inquiry which has sustained our nation's material, humanitarian, and spiritual progress, we cannot fail to condemn any inimical force whether proceeding from an avowed enemy or from a misguided friend within. In doing so we take our guidance from our conscience, from our sense of justice, and from the convictions of one of our Founding Fathers, who declared: "The opinions of men are not the object of civil government, nor under its jurisdiction" and "to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy." This belief was purchased through centuries of struggle extending far back into history beyond the discovery of the New World, but when enacted into law in the infancy of our nation was greeted in the Old World as "an example of legislative wisdom and liberality never before known." It would be one of the supreme ironies of history and one of the greatest tragedies if the confidence we exhibited in the weakness of youth should be destroyed through fear in the strength of our maturity.

2. The claims of military security

We accept unhesitatingly the application to colleges and universities of needed safeguards against the misuse of specially classified information important for military security, to the extent to which these are applied elsewhere. We insist, however, that these safeguards should extend only to persons who have access to such information; in no degree do they justify the proscription of individuals because of their beliefs or associations, unless these persons were knowingly participants in criminal acts or conspiracies, either in the past or at present. Inquiry into beliefs and associations

should be restricted to those that are relevant to the discovery of such actual or threatened offenses.

3. Vigilance against subversion of the educational process

The academic community has a duty to defend society and itself from subversion of the educational process by dishonest tactics, including political conspiracies to deceive students and lead them unwittingly into acceptance of dogmas or false causes. Any member of the academic profession who has given reasonable evidence that he uses such tactics should be proceeded against forthwith, and should be expelled from his position if his guilt is established by rational procedure. Instances of the use of such tactics in the past by secret Communist groups in a few institutions seem to have occurred, and vigilance against the danger of their occurrence in the future is clearly required.

4. Disclaimer oaths and general investigations of college and university teachers

Nothing in the record of college and university teachers as a group justifies the imputation to them of a tendency toward disloyalty to the government or toward subversive intent with respect to the nation's institutions. In this regard they are not different from all other people. We deplore the entire recent tendency to look upon persons or groups suspiciously and to subject their characters and attitudes to special tests as a condition of employing them in responsible positions. This country's greatness is founded upon a belief in the individual's importance and upon a trust in his ability and worthiness to serve his fellow-men in accordance with his capacity. Only by gross misconduct, proved by means of due process, should the right to this trust be lost, and then only to the extent necessary to defend the common interest. The confidence reposed in the individual and in his integrity, and the independence of decision and action granted him, have been vindicated throughout our history by the loyalty of our citizens, and by their willingness to make sacrifices in times of crisis. With infrequent exceptions, even those who have pursued false causes and have seemed at times to threaten the nation's fundamental principles have done so, as history generally recognizes, out of concern for the general welfare as they saw it.

For all these reasons, and because of the unhappy disruption of normal academic work which extreme actions in the name of security entail, as well as because of their evident fruitlessness, we oppose the imposition of disclaimer oaths, whereby individuals are compelled to swear or affirm that they do not advocate or have not advocated, or that they are not or have not been members of any organizations which advocate, overthrow of the government. For similar reasons, we oppose investigations of individuals against whom there is no reasonable suspicion of illegal or unprofessional conduct or of an intent to engage in such conduct. On the same grounds we oppose legislation which imposes upon supervisory officials the duty to certify that members of their staffs are free of subversive taint. We particularly object to these measures when they are directed against members of the academic profession as a special class apart from the population as a whole. Not only is the stigma of such a discrimination unjustified, but the application of these discriminatory measures denies the particular need for freedom from pressures and restrictions, which is a productive requirement of the academic profession and, for similar reasons, of lawmakers, judges, clergymen, journalists, and the members of certain other professions. We urge the academic profession not to be lulled, by the hope of possible non-enforcement or by a merely routine application of these measures, into an acquiescence in their maintenance as "paper" requirements. They should not be tolerated even as relics from which life might appear to have departed; for they would not only be an evil heritage unworthy of our traditions and our goals; their revivification would always be an ugly possibility. They should be steadfastly opposed until they are eliminated. At the same time, we cannot condemn educational institutions or teachers for yielding to the constraint of laws embodying such requirements, even though we regard the laws containing them as pernicious.

5. Grounds of adverse action

Action against a faculty member cannot rightly be taken on grounds that limit his freedom as an individual, as a member of the academic community, or as a teacher and scholar. This principle was defined in the 1940 *Statement of Principles on Academic Freedom and Tenure*, adopted by the Association of American

Colleges and the American Association of University Professors and approved since by other organizations. Implicit in that *Statement* is the proposition (rendered explicit in later reports of committees of the American Association of University Professors and resolutions of its Annual Meetings) that a faculty member's professional fitness to continue in his position, considered in the light of other relevant factors, is the question to be determined when his status as a teacher is challenged. No rule demanding removal for a specific reason not clearly determinative of professional fitness can validly be implemented by an institution, unless the rule is imposed by law or made necessary by the institution's particular religious coloration. Any rule which bases dismissal upon the mere fact of exercise of constitutional rights violates the principles of both academic freedom and academic tenure. By eliminating a decision by a faculty member's peers, it may also deny due process. This principle governs the question of dismissal for avowed past or present membership in the Communist Party taken by itself. Removal can be justified only on the ground, established by evidence, of unfitness to teach because of incompetence, lack of scholarly objectivity or integrity, serious misuse of the classroom or of academic prestige, gross personal misconduct, or conscious participation in conspiracy against the government. The same principle applies, *a fortiori*, to alleged involvement in Communist-inspired activities or views, and to refusal to take a trustee-imposed disclaimer oath.

6. Refusal to testify as ground for removal

It follows that the invocation of the Fifth Amendment by a faculty member under official investigation cannot be in itself a sufficient ground for removing him. The Amendment's protection is a constitutional privilege. The exercise of one's constitutional privilege against self-incrimination does not necessarily or commonly justify an inference of criminal guilt; and even if it were to be ruled otherwise, it would not follow that the loss of an academic position should automatically result from a legal offense, whether proved in court or established by inference, without consideration of the relation of the offense to professional fitness. Invocation of the Fifth Amendment is to be weighed with an individual's other

actions in passing a judgment on him. The same may be said with regard to refusals to testify on other grounds, such as the assertion of a right of silence thought to be conferred by the free-speech provision of the First Amendment, or because of a claim of lack of authority in the investigating body, an unwillingness to inform upon other persons, or a reluctance to cooperate in an investigation deemed oppressive or dangerous to the public interest.

7. Grounds for preliminary inquiry by an employing institution

The administrations of colleges and universities should, of course, take note of indications of the possible unfitness of faculty members. If a faculty member invokes the Fifth Amendment when questioned about Communism, or if there are other indications of past or present Communist associations or activities, his institution cannot ignore the possible significance for itself of these matters. There is then a possibility of his involvement in activities subversive of education itself, or otherwise indicative, to an important degree, of his unfitness to teach. As in other instances of possible unfitness, preliminary inquiry into this possibility is warranted and can become a duty. The aid of other faculty members may be sought in such an inquiry; but the inquiry should be confidential in so far as possible, and should not be substituted for the hearing to which the faculty member has a right if formal charges are brought against him. If, after consideration of a faculty member's whole career, as well as the circumstances surrounding his invocation of the Fifth Amendment, probable cause to believe that he may be unfit is not disclosed, the matter should end at this stage; but if probable cause for belief in his unfitness is shown, charges leading to a formal hearing should be brought.

8. Procedural due process in tenure cases

The principles of procedural due process contained in the 1940 *Statement of Principles* are as applicable to instances in which a faculty member's tenure is challenged by his institution or its officials on grounds related to loyalty, national security, or alleged connections with Communism, as they are to instances of challenge on other grounds. Whenever charges are made against a faculty member with a view to his removal, he has a right to a fair hear-

ing, to a judgment by his academic peers before adverse action is taken, and to a decision based on the evidence. The principal elements of due process in such proceedings are set forth in the 1940 *Statement of Principles*, while other procedures, the need for which appears in some of the situations this committee has reviewed, are still to be specified.

There should be adequate faculty participation in any such proceedings, although no particular form of faculty participation or means to assure it is stipulated in the principles as now stated. It is an important safeguard that whatever procedure is used should be one that the faculty of the institution has itself endorsed prior to the occurrence of the case. It is desirable to have procedural matters vested in a standing committee chosen in advance to deal with matters of academic freedom and tenure; *ad hoc* committees may be subject to manipulation or to the suspicion of it. Faculty members should be willing to accept the difficult responsibility of serving on such committees and, when cases are presented, should accept the painful need to reach decisions. On occasion, problems have arisen because faculty committees have defaulted in their responsibility to render unequivocal advice to administrative officers and trustees.

Public hearings before committees with power to recommend or decide are not regarded as desirable. The accused faculty member should be permitted, however, to have persons of his choice present along with counsel; and observers from legitimately interested outside groups, such as the American Association of University Professors, should also be permitted to attend. In accordance with established principles of justice, the burden of proof should rest upon the administrative officer bringing the charge, and should not be placed on the faculty member, whether he is being heard for invoking the Fifth Amendment or for other reasons. Because such hearings are not legal trials but are processes of a more informal sort, and the purpose is to establish clearly the fitness or unfitness of a particular person to teach, the introduction of new issues during the course of the hearings is not inconsistent with due process, provided sufficient opportunity to meet these issues is afforded. The decision should be based solely on evidence disclosed at the hearing.

9. The faculty member's obligation of disclosure

The fact that a faculty member has refused to disclose information to his own institution is relevant to the question of fitness to teach, but not decisive. If the refusal appears to be based upon evasiveness and a desire to withhold evidence of illegal conduct which would disqualify him as a member of the faculty, the refusal would be a weighty adverse factor. On the other hand, a refusal to answer questions which arises from a sincere belief that a teacher is entitled to withhold even from his own institution his political and social views should be accorded respect and should be weighed with other factors in the determination of his fitness to teach. Nevertheless, members of the teaching profession should recognize that sincerity cannot be judged objectively and that a college or university is entitled to know the facts with which it must deal. This is especially true when a faculty member's activities, whether or not they are blameworthy, have resulted in publicity hurtful to his institution. Accordingly, in any proper inquiry by his institution, it is the duty of a faculty member to disclose facts concerning himself that are of legitimate concern to the institution, namely, those that relate to his fitness as a teacher, as enumerated above in the sections, Grounds of Adverse Action, and Grounds for Preliminary Inquiry by an Employing Institution. This obligation diminishes if the institution has announced a rigid policy of dismissal in such a way as to prejudge the case.

We are aware that statements made by a faculty member to his institution are not legally privileged and that his interrogators may be compelled in a later official proceeding to testify that he made them. If such statements tend to incriminate him, he may in effect lose the protection of the Fifth Amendment. But we believe that the institution's right to know facts relevant to fitness to teach should prevail over this consideration.

10. Suspension

Suspension of a faculty member during the time of inquiry and decision by the institution is justified only in certain instances in which the reason for proceeding render it highly probable not only that he is unfit to continue as a faculty member but that his unfitness is of a kind almost certain to prejudice his teaching or

research. Even in such instances, the suspension should be with full salary. By his own desire the faculty member may, of course, be temporarily relieved of his duties in order to prepare his defense.

11. Faculty members not on tenure

Academic freedom should be accorded not only to faculty members with tenure but also, during the terms of their appointments, to others with probationary or temporary status who are engaged in teaching or research. Moreover, neither reappointment nor promotion to tenure status should be denied, nor any other adverse action taken, for reasons that violate academic freedom. Dismissal or other adverse action prior to the expiration of a term appointment requires the same procedures as does the dismissal of a faculty member with tenure; but no opportunity for a hearing is normally required in connection with failure to reappoint. If, however, there are reasonable grounds to believe that a nontenure staff member was denied reappointment for reasons that violate academic freedom, there should be a hearing before a faculty committee. In such a hearing the burden of proof is on the persons who assert that there were improper reasons for the failure to reappoint. If a *prima facie* case of violation of academic freedom is made, the administration of the institution is then required to come forward with evidence in rebuttal.

A [1958] Statement of the Committee on Academic Freedom and Tenure Supplementary to the 1956 Report, "Academic Freedom and Tenure in the Quest for National Security"

Recent decisions of the United States Supreme Court, recognizing the validity of legally-based assertions of the right to remain silent under a variety of circumstances, or declaring the invalidity of official action adverse to an individual because of his refusal to yield information about his possible Communist connections, go far to justify the position taken by the Association's Special Committee on these matters in its report, "Academic Freedom and Tenure in the Quest for National Security," which was published

in the Spring, 1956, issue of the *AAUP Bulletin* and was approved by the Association's Council and Forty-Second Annual Meeting. Some of these involve situations closely analogous to academic dismissal proceedings.[2]

Several of the reports of investigating committees [not published here] deal with cases in which dismissed faculty members followed their refusals to answer questions before Congressional committees with refusals to make disclosures to representatives of their own institutions, when their previous conduct gave rise to questions. These cases may be visualized as falling into a spectrum extending from a complete refusal to discuss questions dealing with political or social views or associations, to the most complete willingness to answer all such questions even in a formal, open hearing. At one end of the spectrum, that of complete refusal to answer questions of this type on the claim of principle, is found the case of Professor Stanley Moore at Reed College. To this may be added the case of Professor Horace B. Davis at the University of Kansas City, already published in the *AAUP Bulletin* (April, 1957, Supplement) but not yet acted upon by the Association. Farther down the spectrum is the stand of Professor L. R. LaVallee at Dickinson College, who seems to have answered questions relating to previous political associations in certain private conferences but bluntly refused to answer similar questions in his hearing. Two cases fall near the middle of the spectrum. One is the case of Dr. H. Chandler Davis at the University of Michigan, who answered some questions relating to his integrity, but declined to answer questions directed toward his political views. The other is that of Associate Professor Edwin Berry Burgum, at New York University, who in his hearing denied any corrupting influence of his alleged Communist connections, any advocacy of violent overthrow of the government, or any dictation of his views by an outside source; but who nevertheless refused to answer certain other questions regarding his political views and activities, and in particular concerning his

[2] See, in particular, *Slochower* v. *Board of Higher Education*, 350 U. S. 551 (1956); *Watkins* v. *United States*, 354 U. S. 178 (1957); *Sweezy* v. *State of New Hampshire*, 354 U. S. 234 (1957); *Konigsberg* v. *State Bar of California*, 353 U. S. 252 (1957).

possible engagement in recruiting students into the Communist Party. Farther toward the end marked by compliance with questioning is the special case of Professor Alex B. Novikoff, at the University of Vermont. Professor Novikoff answered frankly all questions relating to the period dating from his appointment to the University, but he refused to discuss questions directed at certain associations alleged to have existed in earlier years. Yet ultimately he offered to answer even these questions if his testimony could be made off the record in private instead of public hearing, an offer which the board of hearing did not see fit to accept. Finally, at the extreme of the spectrum, is the case of Associate Professor Mark Nickerson, at the University of Michigan. Professor Nickerson undertook to answer all questions directed to him.

It may be further noted that in the case of Mr. Andries Deinum, at the University of Southern California, no opportunity at all was given him to answer questions or charges or to have a hearing. In the early case of Associate Professor Lyman Bradley, at New York University, there was, on the other hand, a hearing on charges, but refusal to answer, or lack of candor toward college authorities, did not become an issue. These cases may be regarded as extending the two ends of the spectrum into the invisible.

Each report here published expresses the judgment of its authors upon the situation presented, when judged in the light of Association principles still undergoing refinement and application. Committee A has been charged with the function of elaborating those principles on the basis of further thought and of the experience reflected in these reports. It is first desirable to restate pertinent passages from the 1956 Report of the Special Committee, as follows:

> The administrations of colleges and universities should, of course, take note of indications of the possible unfitness of faculty members. If a faculty member invokes the Fifth Amendment when questioned about Communism, or if there are other indications of past or present Communist associations or activities, his institution cannot ignore the possible significance for itself of these matters. There is then a possibility of his involvement in activities subversive of education itself, or otherwise indicative, to an important degree, of his unfitness to teach. As in other instances of possible unfitness, preliminary inquiry into this possibility is warranted and can become a duty. The aid of other faculty members may be sought in such an inquiry; but the inquiry should be confidential in so far as possible, and should not be substituted for the hearing to which the faculty member has a right if formal charges are brought against him. If, after consideration of a faculty member's whole career, as well as the circumstances surrounding his invocation of the Fifth Amendment, probable cause to believe that he may be unfit is not disclosed, the matter should end at this stage; but if probable cause for belief in his unfitness is shown, charges leading to a formal hearing should be brought.
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> . . . [T]he invocation of the Fifth Amendment by a faculty member under official investigation cannot be in itself a sufficient ground for removing him. The Amendment's protection is a constitutional privilege. The exercise of one's constitutional privilege against self-incrimination does not necessarily or commonly justify an inference of criminal guilt; and even if it were to be ruled otherwise, it would not follow that the loss of an academic position should automatically result from a legal offense, whether proved in court or established by inference, without consideration of the relation of the offense to professional fitness. Invocation of the Fifth Amendment is to be weighed with an individual's other actions in passing a judgment on him. The same may be said with regard to refusals to testify on other grounds, such as the assertion of a right of silence thought to be conferred by the free-speech provision of the First Amendment, or because of a claim of lack of authority in the investigating body, an unwillingness to inform upon other persons, or a reluctance to cooperate in an investigation deemed oppressive or dangerous to the public interest.
>
> The fact that a faculty member has refused to disclose information to his own institution is relevant to the question of fitness to teach, but not decisive. If the refusal appears to be based upon evasiveness and a desire to withhold evidence of illegal conduct which would disqualify him as a member of the faculty, the refusal would be a weighty adverse factor. On the other hand, a refusal to answer questions which arises from a sincere belief that a teacher is entitled to withhold even from his own institution his political and social views should be accorded respect and should be weighed with other factors in the determination of his fitness to teach. Nevertheless, members

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of the teaching profession should recognize that sincerity cannot be judged objectively and that a college or university is entitled to know the facts with which it must deal. This is especially true when a faculty member's activities, whether or not they are blameworthy, have resulted in publicity hurtful to his institution. Accordingly, in any proper inquiry by his institution, it is the duty of a faculty member to disclose facts concerning himself that are of legitimate concern to the institution. . . . This obligation diminishes if the institution has announced a rigid policy of dismissal in such a way as to prejudge the case.

We are aware that statements made by a faculty member to his institution are not legally privileged and that his interrogators may be compelled in a later official proceeding to testify that he made them. If such statements tend to incriminate him, he may in effect lose the protection of the Fifth Amendment. But we believe that the institution's right to know facts relevant to fitness to teach should prevail over this consideration.

. . . Removal can be justified only on the ground, established by evidence, of unfitness to teach because of incompetence, lack of scholarly objectivity or integrity, serious misuse of the classroom or of academic prestige, gross personal misconduct, or conscious participation in conspiracy against the government. The same principle applies, *a fortiori*, to alleged involvement in Communist-inspired activities or views.

II

The most urgent need for elaboration of the principles enunciated in 1956 concerns the relative weight that may properly, in the context of all other pertinent considerations, be given, in reaching a final decision, to the reasons for the faculty member's continued refusal to make disclosures to his own institution. As the 1956 report recognizes, such refusal, in itself, may not be discreditable to the faculty member if it is based on honest adherence to principle —for example, a principle of freedom, or belief in the right of privacy—even if others disagree with his view. This is true even where such silence may follow a refusal on Fifth Amendment or other grounds to testify before a Congressional committee or other governmental agency. On the other hand, the faculty member's continued silence may reflect unfavorably upon him if his purpose is to conceal derogatory information he knows to be pertinent to the question of fitness.

The assertion by a faculty member of the right to withhold from his institution information which is pertinent to his fitness casts upon him the burden of explaining his refusal. Following such an explanation, the responsible tribunal or authorities may find it necessary to determine, as one element in gauging his fitness to continue as a teacher, what his actual reasons for silence are, even though this will not always be an easy determination to make.

Even if the tribunal finds that the faculty member's reasons for silence are discreditable to him, this adverse factor must be judged in the context of all the other available evidence as to his professional fitness, for here, as in all other aspects of dismissal proceedings, the deciding tribunal or authority is always under a duty to reach a just conclusion in the light of the faculty member's full record. The tribunal also has an obligation to state the reasoning that lies back of its decision in a manner that will show the considerations that have affected the decision and how they have been balanced. On his part, the faculty member who persists in silence within his own institution must remember that, although the burden of proof rests on those who are bringing charges against him, his withholding of information sought by his institution may well leave unchallenged other evidence tending to show him unfit. To put it somewhat differently, the institution may properly concern itself with the facts falling within the area of the teacher's silence as they bear upon the issue of his fitness, and arrive at a judgment concerning them.

The faculty member may find himself facing another dilemma. He may run the risk of losing the protection of the Fifth Amendment if he answers questions in a public hearing and on the record, or, conversely, of being misjudged if he remains silent. If, in such straits, he offers to answer privately, and off the record, questions he has previously refused to answer, the tribunal should either accept the offer or recognize that the offer is in itself some evidence of candor and sincerity on the part of the teacher. Such private, off-the-record testimony would not, in this committee's judgment, violate the requirement of the 1940 *Statement of Principles on Academic Freedom and Tenure* that "There should be a full stenographic record of the hearing available to the parties concerned." It is well to remember that a dismissal proceeding is not bound by

strict legal rules, and that the aim of the tribunal is to arrive, by all fair means, at the fullest truth relevant to the charges. Off-the-record testimony is properly regarded with suspicion and therefore generally forbidden in academic dismissal proceedings, particularly for witnesses testifying against the accused faculty member. But its limited use for good cause by the faculty member, who enjoys the benefit of the doubt in the proceeding and on whom the duty of candor is being urged, may well enable the tribunal to reach a fair and just decision. In explaining its decision, it may, of course, draw inferences, whether favorable or unfavorable, from such off-the-record testimony, even though the testimony itself may not be disclosed.

If the tribunal refuses to accept an honorable reason offered by a faculty member in justification of his nondisclosure, there being no rational basis in the record for this refusal, and he is then dismissed solely because of this silence, the action is censurable because a sufficient ground for dismissal has not been established. If, on the other hand, a decision to dismiss is found to have been reached fairly and to be supportable on the record when judged by the foregoing considerations, the Association is not entitled to dispute it.

III

Further comment should be made concerning the statement in the 1956 Report that the "obligation [of a faculty member to disclose facts concerning himself that are of legitimate concern to his institution] diminishes if the institution has announced a rigid policy of dismissal in such a way as to prejudge the case." The objection here is not to the fact that an institution may wish to enumerate in a general statement justifiable grounds for the removal of members of its faculty, such as those found in the 1956 Report of the Special Committee, for it is often desirable that conduct deemed to be improper should be defined in advance. Where, however, a rigid policy, in effect predetermining the question of fitness, is based on inadequate grounds, such as invocation of the Fifth Amendment or the simple fact of membership in an organization, the faculty member may be justified in refusing to become party to an intramural form of self-incrimination.

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Bentley Glass (Biology), The Johns Hopkins University, *Chairman*

Members: Robert L. Calhoun (Theology), Yale University; Robert K. Carr (Political Science), Dartmouth College and Washington Office; William P. Fidler (English), Washington Office; Ralph F. Fuchs (Law), Indiana University; Charles T. McCormick (Law), University of Texas; Douglas B. Maggs (Constitutional Law), Duke University; Walter P. Metzger (History), Columbia University; Warren C. Middleton (Psychology), Washington Office; Glenn R. Morrow (Philosophy), University of Pennsylvania; George Pope Shannon (English), Washington Office; Warren Taylor (English), Oberlin College; George C. Wheeler (Biology), University of North Dakota; Helen C. White (English), University of Wisconsin, *ex officio*.

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1964 STATEMENT ON THE STANDARDS FOR NOTICE OF NONREAPPOINTMENT

Notice of nonreappointment, or of intention not to recommene reappointment to the governing board, should be given in writing in accordance with the following standards:

1. Not later than March 1 of the first academic year of service, if the appointment expires at the end of the year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

2. Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two year appointment terminates during an academic year, at least six months in advance of its termination.

3. At least twelve months before the expiration of an appointment after two or more years in the institution.

1964 Committee A Statement on Extramural Utterances

The Statement which follows was approved by the Association's Committee A on Academic Freedom and Tenure on October 29, 1964. Its purpose is to clarify those sections of the 1940 *Statement of Principles on Academic Freedom and Tenure* relating to the faculty member's exercise of his freedom of speech as a citizen. The Statement emphasizes the essential considerations and procedures when a faculty member's utterances raise grave doubts concerning his fitness for his position.

The 1940 *Statement of Principles* asserts the faculty member's right to speak or write, as citizen, free from institutional censorship or discipline. At the same time it calls attention to the faculty member's special obligations arising from his position in the community: to be accurate, to exercise appropriate restraint, to show respect for the opinions of others, and to make every effort to indicate that he is not an institutional spokesman. An interpretation of the 1940 *Statement*, agreed to at a conference of the AAC and the AAUP held on November 8, 1940, states that an administration may file charges in accordance with procedures outlined in the *Statement* if it feels that a faculty member has failed to observe the above admonitions and believes that his extramural utterances raise grave doubts concerning his fitness for his position.

In cases involving such charges, it is essential that the hearing should be conducted by an appropriate—preferably elected—faculty committee, as provided in Section 4 of the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*.[1] The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his position. Extramural utterances rarely bear upon the faculty member's fitness

[1] Section 4 provides:
The committee of faculty members to conduct the hearing and reach a decision should either be an elected standing committee not previously concerned with the case or a committee established as soon as possible after the president's letter to the faculty member has been sent. The choice of members of the hearing committee should be on the basis of their objectivity and competence and of the regard in which they are held in the academic community. The committee should elect its own chairman.

for his position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar. In the absence of weighty evidence of unfitness, the administration should not prefer charges; and if it is not clearly proved in the hearing that the faculty member is unfit for his position, the faculty committee should make a finding in favor of the faculty member concerned.

Committee A asserts that it will view with particular gravity an administrative or board reversal of a favorable faculty committee hearing judgment in a case involving extramural utterances. In the words of the 1940 *Statement of Principles*, "the administration should remember that teachers are citizens and should be accorded the freedom of citizens." In a democratic society freedom of speech is an indispensable right of the citizen. Committee A will vigorously uphold that right.

1964 Statement on the Academic Freedom of Students

Upon the recommendation of Committee A on Academic Freedom and Tenure in October, 1960, the Council authorized appointment of a new standing committee, designated as Committee S on Faculty Responsibility for the Academic Freedom of Students. Dr. Phillip Monypenny, Professor of Political Science at the University of Illinois, was appointed to serve as Chairman of the new committee. Once established, Committee S gave primary attention to the task of formulating a statement on the academic freedom of students. Several drafts were prepared, one of which was published with the consent of the Council in the Autumn, 1964, issue of the *AAUP Bulletin* for the express purpose of inviting reaction and comments from members, chapters, conferences, and other interested persons and organizations.

The preliminary Committee S statement stimulated considerable interest and response. Committee S therefore directed most of its attention during 1965 to refining the tentative statement published in 1964. The statement which follows has been approved by the Council in principle but remains a tentative, rather than a fixed, statement of Association policy. The Council has also authorized Committee S to initiate discussions with representatives of other interested national organizations in the hope that these efforts might result in the formulation of a joint statement on student rights and responsibilities; the first of these discussions was held in December, 1966. See also, below, *Statement on Government of Colleges and Universities.*

The members of Committee S who prepared the following statement are: Phillip Monypenny (Political Science), University of Illinois (*Chairman*); Philip Appleman (English), Indiana University; Frederick H. Hartmann (Political Science), University of Florida; Beatrice G. Konheim (Biological Sciences), Hunter College; John J. Reed (History), Muhlenberg College; Tom J. Truss, Jr. (English), University of Mississippi; William Van Alstyne (Law), Duke University; Robert Van Waes (History), Washington Office.

Preamble

Free inquiry and free expression are essential attributes of the community of scholars. As members of that community, students should be encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the

academic community. Students should endeavor to exercise their freedom with maturity and responsibility.

I. In the classroom

The professor in the classroom and in conference should encourage free discussion, inquiry, and expression. Students should be evaluated solely on the basis of their academic performance, not on their opinions or conduct in matters unrelated to academic standards.

A. Protection of freedom of expression. Students are responsible for learning thoroughly the content of any course of study, but they should be free to take reasoned exception to the data or views offered, and to reserve judgment about matters of opinion.

B. Protection against improper academic evaluation. Students are responsible for maintaining standards of academic performance established by their professors, but they should have protection through orderly procedures against prejudiced or capricious academic evaluation.

C. Protection against improper disclosure. Information about student views, beliefs, and political associations which professors acquire in the course of their work as instructors, advisers, and counselors should be considered confidential. Protection against improper disclosure is a serious professional obligation. Judgments of ability and character may be provided under appropriate circumstances.

II. Student records

Institutions should have a carefully considered policy as to the information which should be part of a student's permanent educational record and as to the conditions of its disclosure. To minimize the risk of improper disclosure, academic and disciplinary records should be separate, and the conditions of access to each should be set forth in an explicit policy statement. Transcripts of academic records should contain only information about academic status. Data from disciplinary and counseling files should not be available to unauthorized persons on campus or to any person off campus except for the most compelling reasons. No records should be kept which reflect the political activities or beliefs of students.

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Provision should also be made for periodic routine destruction of noncurrent disciplinary records. Administrative staff and student personnel officers should respect confidential information about students which they acquire in the course of their work.

III. Student affairs

In student affairs, certain standards must be maintained if the academic freedom of students is to be preserved.

A. Freedom from arbitrary discrimination. Colleges and universities should be open to all students who are academically qualified. While sectarian institutions may give admission preference to students of their own persuasion, such a preference should be clearly and publicly stated. College facilities and services should be open to all students, and institutions should use their influence to secure equal access for all students to public facilities in the local community.

B. Freedom of association. Students bring to the campus a variety of interests previously acquired and develop many new interests as members of the academic community. They should be free to organize and join associations to promote their common interests.

1. Affiliation with an extramural organization should not of itself affect recognition of a student organization.

2. Each organization should be free to choose its own campus adviser, and institutional recognition should not be withheld or withdrawn solely because of the inability of a student organization to secure an adviser. Members of the faculty serve the college community when they accept the responsibility to advise and consult with student organizations; they should not have the authority to control the policy of such organizations.

3. Student organizations may be required to submit a current list of officers, but they should not be required to submit a membership list as a condition of institutional recognition.

4. Campus organizations should be open to all students without respect to race, religion, creed, or national origin, except for religious qualifications which may be required by sectarian organizations.

5. Students and student organizations should be free to examine and to discuss all questions of interest to them, and to express opinions publicly or privately. They should also be free to support causes by any orderly means which do not disrupt the regular and essential operation of the institution.

6. Students should be allowed to invite and to hear any person of their own choosing. While the orderly scheduling of facilities may require the observance of routine procedures before a guest speaker is invited to appear on campus, institutional control of campus facilities should never be used as a device of censorship. It should be made clear to the academic and larger community that sponsorship of guest speakers does not necessarily imply approval or endorsement of the views expressed, either by the sponsoring group or the institution.

C. Student participation in institutional government. As constituents of the academic community, students should be free, individually and collectively, to express their views on issues of institutional policy and on matters of general interest to the student body. The student body should have clearly defined means to participate in the formulation and application of regulations affecting student affairs. Student governments should be protected from arbitrary intervention.

D. Student publications. Student publications and the student press are a valuable aid in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus. They are a means of bringing student concerns to the attention of the faculty and the institutional authorities and of formulating student opinion on various issues on the campus and in the world at large.

1. The student press should be free of censorship and advance approval of copy, and its editors and managers should be free to develop their own editorial policies and news coverage.

2. The integrity and responsibility of student publications should be encouraged by arrangements which permit financial autonomy or, ideally, complete financial independence.

3. Editors and managers should subscribe to canons of responsible journalism. At the same time, they should be protected from

arbitrary suspension and removal because of student, faculty, administrative, or public disapproval of editorial policy or content. Only for proper and stated causes should editors and managers be subject to removal and then by orderly and prescribed procedures.

IV. Off-campus freedom of students

A. Exercise of rights of citizenship. As citizens, students should enjoy the same freedom of speech, peaceful assembly, and right of petition that other citizens enjoy. Faculty members and administrative officials should insure that institutional powers are not employed to inhibit such intellectual and personal development of students as is often promoted by their off-campus activities and their exercise of the rights of citizenship.

B. Institutional authority and civil penalties. Activities of students may upon occasion result in violation of law. In such cases, institutional officials should apprise students of their legal rights and may offer other assistance. Students who violate the law may incur penalties prescribed by civil authorities, but institutional authority should never be used merely to duplicate the function of general laws. Only where the institution's interests as an academic community are distinct from those of the general community should the special authority of the institution be asserted. The student who incidentally violates institutional regulations in the course of his off-campus activity, such as those relating to class attendance, should be subject to no greater penalty than would normally be imposed. Institutional action should be independent of community pressure.

V. Procedural standards in disciplinary proceedings

The disciplinary powers of educational institutions are inherent in their responsibility to protect their educational purpose through the regulation of the use of their facilities and through the setting of standards of conduct and scholarship for the students who attend them. In developing responsible student conduct, disciplinary proceedings play a role substantially secondary to counseling, guidance, admonition, and example. In the exceptional circumstances when these preferred means fail to resolve problems of student conduct, proper procedural safeguards should be observed to protect the student from the unfair imposition of serious penalties. The following are recommended as proper safeguards in such proceedings.[1]

A. Notice of standards of conduct expected of students. Disciplinary proceedings should be instituted only for violation of standards of conduct defined in advance and published through such means as a student handbook or a generally available body of university regulations. Offenses should be as clearly defined as possible, and such vague phrases as "undesirable conduct" or "conduct injurious to the best interests of the institution" should be avoided. Conceptions of misconduct particular to the institution need clear and explicit definition.

B. Investigation of student conduct. 1. Except under emergency circumstances, premises occupied by students and the personal possessions of students should not be searched unless appropriate authorization has been obtained. For premises such as dormitories controlled by the institution, an appropriate and responsible authority should be designated to whom application should be made before a search is conducted. The application should specify the reasons for the search and the objects or information sought. The student should be present, if possible, during the search. For premises not controlled by the institution, the ordinary requirements for lawful search should be followed.

2. Students detected or arrested in the course of serious violations of institutional regulations, or infractions of ordinary law, should be informed of their rights. No form of harassment should be used by institutional representatives to coerce admissions of guilt or information about conduct of other suspected persons.

C. Status of student pending final action. Pending action on the charges, the status of a student should not be altered, or his right to be present on the campus and to attend classes suspended, except for reasons relating to his physical or emotional safety and well-being, or for reasons relating to the safety of students, faculty, or university property.

[1] Honor codes offering comparable guarantees may be an acceptable substitute for the procedural standards set forth in this section.

D. Hearing committee procedures. The formality of the procedure to which a student is entitled in disciplinary cases should be proportionate to the gravity of the offense and the sanctions which may be imposed. Minor penalties may be assessed informally under prescribed procedures. When misconduct may result in serious penalties, the student should have the right to a hearing before a regularly constituted hearing committee.

1. The hearing committee should include faculty members or, if regularly included or requested by the accused, both faculty and student members. No member of the hearing committee who is otherwise interested in the particular case should sit in judgment during the proceeding.

2. The student should be informed, in writing, of the reasons for the proposed disciplinary action with sufficient particularity, and in sufficient time, to ensure opportunity to prepare for the hearing.

3. The student appearing before the hearing committee should have the right to be assisted in his defense by an adviser of his choice.

4. The burden of proof should rest upon the officials bringing the charge.

5. The student should be given an opportunity to testify and to present evidence and witnesses. He should have an opportunity to hear and question adverse witnesses. In no case should the committee consider statements against him unless he has been advised of their content and of the name of those who made them, and unless he has been given an opportunity to rebut unfavorable inferences which might otherwise be drawn.

6. All matters upon which the decision may be based must be introduced into evidence at the proceeding before the hearing committee. The decision should be based solely upon such matter. Improperly acquired evidence should not be admitted.

7. In the absence of a transcript, there should be both a digest and a verbatim record, such as a tape recording of the hearing.

8. The decision of the hearing committee should be final, subject to the student's right to appeal to the governing board of the institution.

1958 Statement of Principles on Academic Retirement and Insurance Programs

The 1958 *Statement of Principles on Academic Retirement and Insurance Programs* was approved in that year by the Association of American Colleges, and approved by the Council and endorsed by the Annual Meeting of the American Association of University Professors.

Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or administrator, or even of the individual institution. The policy of an institution for the retirement of faculty members and administrators and its plan for their insurance benefits and retirement annuities should be such as to increase the effectiveness of its services as an educational agency. Specifically, this policy and plan should be such as to attract individuals of the highest abilities to educational work, to sustain the morale of the faculty, to permit faculty members with singleness of purpose to devote their energies to serving their institution, and to make it possible in a socially acceptable manner to discontinue the services of members of the faculty when their usefulness is undermined by age.

The following is recommended practice:

1. The retirement policy and annuity plan of an institution, as well as its insurance program, should be clearly defined and be well understood by both the faculty and the administration of the institution.

2. The institution should have a fixed and relatively late retirement age, the same for teachers and administrators. The length of training of college teachers, their longevity and their health generally are such that in the present circumstances the desirable fixed retirement age would appear to be from sixty-seven to seventy.

3. Circumstances that may seem to justify the involuntary retirement of a teacher or administrator before the fixed retirement age should in all cases be considered by a joint faculty-administration committee of the institution. This committee should preferably be a standing committee, but in the consideration of specific cases, no interested person should be permitted to participate in its deliberations. (The above is not meant to indicate that the involuntary

return of an administrator to teaching duties need be regarded as a retirement.)

4. The recall of teachers on retired status should be without tenure and on an annual appointment. Such recall should be used only where the services are clearly needed and where the individual is in good mental and physical health. It may be for part or for full time. Such recall should be rare where the retirement age is as late as 70.

5. The institution should provide for a system of retirement annuities. Such a system should:

(a) Be financed by contributions made during the period of active service by both the individual and the institution.

(b) Be participated in by all full-time faculty members who have attained a certain fixed age not later than 30.

(c) Be planned to provide in normal circumstances and in so far as possible for a retirement life annuity (including Federal Old Age and Survivors Insurance benefits) equivalent in purchasing power to approximately 50% of the average salary over the last 10 years of service if the retirement is at 70, and a somewhat higher percentage if the fixed retirement age is younger.

(d) Ensure that the full amount of the individual's and the institution's contribution, with the accumulations thereon, be vested in the individual, available as a benefit in case of death while in service, and with no forfeiture in case of withdrawal or dismissal from the institution.

(e) Be such that the individual may not withdraw his equity in cash but only in the form of an annuity. (To avoid administrative expense, exception might be made for very small accumulations in an inactive account.) Except when they are small, death benefits to a widow should be paid in the form of an annuity.

6. When a new retirement policy or annuity plan is initiated or an old one changed, reasonable provision either by special financial arrangements or by the gradual inauguration of the new plan should be made for those adversely affected.

7. It is desirable for the insurance program of an institution to include the following:

(a) Life insurance on a group basis, in addition to survivors' benefits under Federal Old Age and Survivors Insurance.

(b) Insurance for medical expenses, including major medical (catastrophic) insurance.

(c) Disability insurance, covering long-term total disability for any occupation for which the staff member is reasonably fitted, and paying half-salary up to a reasonable maximum during disability before retirement as well as continuing contributions toward a retirement annuity.

APPENDIX J

1961 Statement on Recruitment and Resignation of Faculty Members

The *Statement on Recruitment and Resignation of Faculty Members* was adopted by the Association of American Colleges in January, 1961, with the following reservations as set forth in a preamble prepared by that Association's Commission on Academic Freedom and Tenure:

1. No set of principles adopted by the Association can do more than *suggest* and *recommend* a course of action. Consequently, the present statement in no way interferes with institutional sovereignty.
2. The Commission realizes that the diversity of practice and control that exists among institutions of higher learning precludes any set of standards from being *universally* applicable to every situation.
3. The statement is concerned only with *minimum* standards and in no way seeks to create a norm for institutions at which "better" practices already are in force.
4. The Commission recognizes the fact that "emergency" situations will arise and will have to be dealt with. However, it urges both administration and faculty to do so in ways that will not go counter to the spirit of cooperation, good faith and responsibility that the statement is seeking to promote.
5. The Commission believes that the spirit embodied in the proposed statement is its most important aspect.

In view of these reservations, the Council of the American Association of University Professors, in April, 1961, voted approval of the Statement without adopting it as a binding obligation. Endorsement of the Statement in this form was voted by the Forty-Seventh Annual Meeting.

Mobility of faculty members among colleges and universities is rightly recognized as desirable in American higher education. Yet the departure of a faculty member always requires changes within his institution, and may entail major adjustments on the part of his colleagues, the administration, and students in his field.[1] Ordinarily

[1] [*Editor's note.* This statement deals with a teacher's accountability to his institution; breach of the standards here set forth may under certain circumstances warrant public notice. A teacher may also have a further professional responsibility to the educational process, to his colleagues, and to his students; failure to give due recognition to the possibility or fact of such further responsibility may constitute an ethical lapse of a private but nonetheless significant nature.]

a temporary or permanent successor must be found and appointed to either his position or the position of a colleague who is promoted to replace him.

In a period of expansion of higher education, such as that already existing and promising to be even more intensified as a pattern for the coming years, adjustments are required more frequently as the number of positions and of transfers among institutions increases. These become more difficult than at other times, especially in the higher academic ranks. Clear standards of practice in the recruitment and in the resignations of members of existing faculties should contribute to an orderly interchange of personnel that will be in the interest of all.

The standards set forth below are recommended to administrations and faculties, in the belief that they are sound and should be generally followed. They are predicated on the assumption that proper provision has been made by employing institutions for timely notice to probationary faculty members and those on term appointments, with respect to their subsequent status. In addition to observing applicable requirements for notice of termination to probationary faculty members, institutions should make provision for notice to all faculty members not later than March 15 of each year of their status the following fall, including rank and (unless unavoidable budget procedures beyond the institution forbid) prospective salary.

1. Negotiations looking to the possible appointment for the following fall of persons who are already faculty members of other institutions, in active service or on leave-of-absence and not on terminal appointment, should be begun and completed as early as possible in the academic year. It is desirable that, when feasible, the faculty member who has been approached with regard to another position inform the appropriate officers of his institution when such negotiations are in progress. The conclusion of a binding agreement for the faculty member to accept an appointment elsewhere should always be followed by prompt notice to his institution.

2. A faculty member should not resign in order to accept other employment as of the end of the academic year, later than May 15 or 30 days after receiving notification of the terms of his continued

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employment the following year, whichever date occurs later. It is recognized, however, that this obligation will be in effect only if institutions generally observe the time factor set forth in the following paragraph for new offers. It is also recognized that emergencies will occur. In such an emergency the faculty member may ask the appropriate officials of his institution to waive this requirement; but he should conform to their decision.

3. To permit a faculty member to give due consideration and timely notice to his institution in the circumstances defined in paragraph 1 of these standards, an offer of appointment for the following fall at another institution should not be made after May 1. The offer should be a "firm" one, not subject to contingencies.

4. Institutions deprived of the services of faculty members too late in the academic year to permit their replacement by securing the members of other faculties in conformity to these standards, and institutions otherwise prevented from taking timely action to recruit from other faculties, should accept the necessity of making temporary arrangements or obtaining personnel from other sources, including new entrants to the academic profession and faculty personnel who have retired.

5. Except by agreement with his institution, a faculty member should not leave or be solicited to leave his position during an academic year for which he holds an appointment.

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1964 Statement on Preventing Conflicts of Interest in Government-Sponsored Research at Universities

A joint statement of the Council of the American Association of University Professors and the American Council on Education.

The increasingly necessary and complex relationships among universities, Government, and industry call for more intensive attention to standards of procedure and conduct in Government-sponsored research. The clarification and application of such standards must be designed to serve the purposes and needs of the projects and the public interest involved in them and to protect the integrity of the cooperating institutions as agencies of higher education.

The Government and institutions of higher education, as the contracting parties, have an obligation to see that adequate standards and procedures are developed and applied; to inform one another of their respective requirements; and to assure that all individuals participating in their respective behalfs are informed of and apply the standards and procedures that are so developed.

Consulting relationships between university staff members and industry serve the interests of research and education in the university. Likewise, the transfer of technical knowledge and skill from the university to industry contributes to technological advance. Such relationships are desirable, but certain potential hazards should be recognized.

A. Conflict situations

1. Favoring of outside interests. When a university staff member (administrator, faculty member, professional staff member, or employee) undertaking or engaging in Government-sponsored work has a significant financial interest in, or a consulting arrangement with, a private business concern, it is important to avoid actual or apparent conflicts of interest between his Government-sponsored university research obligations and his outside interests and other obligations. Situations in or from which conflicts of interest may arise are the:

a. Undertaking or orientation of the staff member's university research to serve the research or other needs of the private firm

without disclosure of such undertaking or orientation to the university and to the sponsoring agency;

b. Purchase of major equipment, instruments, materials, or other items for university research from the private firm in which the staff member has the interest without disclosure of such interest;

c. Transmission to the private firm or other use for personal gain of Government-sponsored work products, results, materials, records, or information that are not made generally available. (This would not necessarily preclude appropriate licensing arrangements for inventions, or consulting on the basis of Government-sponsored research results where there is significant additional work by the staff member independent of his Government-sponsored research);

d. Use for personal gain or other unauthorized use of privileged information acquired in connection with the staff member's Government-sponsored activities. (The term "privileged information" includes, but is not limited to, medical, personnel, or security records of individuals; anticipated material requirements or price actions; possible new sites for Government operations; and knowledge of forthcoming programs or of selection of contractors or subcontractors in advance of official announcements);

e. Negotiation or influence upon the negotiation of contracts relating to the staff member's Government-sponsored research between the university and private organizations with which he has consulting or other significant relationships;

f. Acceptance of gratuities or special favors from private organizations with which the university does or may conduct business in connection with a Government-sponsored research project, or extension of gratuities or special favors to employees of the sponsoring Government agency, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties.

2. Distribution of effort. There are competing demands on the energies of a faculty member (for example, research, teaching, committee work, outside consulting). The way in which he divides his effort among these various functions does not raise ethical questions unless the Government agency supporting his research is

misled in its understanding of the amount of intellectual effort he is actually devoting to the research in question. A system of precise time accounting is incompatible with the inherent character of the work of a faculty member, since the various functions he performs are closely interrelated and do not conform to any meaningful division of a standard work week. On the other hand, if the research agreement contemplates that a staff member will devote a certain fraction of his effort to the Government-sponsored research, or he agrees to assume responsibility in relation to such research, a demonstrable relationship between the indicated effort or responsibility and the actual extent of his involvement is to be expected. Each university, therefore, should—through joint consultation of administration and faculty—develop procedures to assure that proposals are responsibly made and complied with.

3. Consulting for Government agencies or their contractors. When the staff member engaged in Government-sponsored research also serves as a consultant to a Federal agency, his conduct is subject to the provisions of the Conflict of Interest Statutes (18 U.S.C. 202–209 as amended) and the President's memorandum of May 2, 1963, *Preventing Conflicts of Interest on the Part of Special Government Employees.* When he consults with one or more Government contractors, or prospective contractors, in the same technical field as his research project, care must be taken to avoid giving advice that may be of questionable objectivity because of its possible bearing on his other interests. In undertaking and performing consulting services, he should make full disclosure of such interests to the university and to the contractor insofar as they may appear to relate to the work at the university or for the contractor. Conflict of interest problems could arise, for example, in the participation of a staff member of the university in an evaluation for the Government agency or its contractor of some technical aspect of the work of another organization with which he has a consulting or employment relationship or a significant financial interest, or in an evaluation of a competitor to such other organization.

B. University responsibility

Each university participating in Government-sponsored research should make known to the sponsoring Government agencies:

1. The steps it is taking to assure an understanding on the part of the university administration and staff members of the possible conflicts or interest or other problems that may develop in the foregoing types of situations, and

2. The organizational and administrative actions it has taken or is taking to avoid such problems, including:

a. Accounting procedures to be used to assure that Government funds are expended for the purposes for which they have been provided, and that all services which are required in return for these funds are supplied;

b. Procedures that enable it to be aware of the outside professional work of staff members participating in Government-sponsored research, if such outside work relates in any way to the Government-sponsored research;

c. The formulation of standards to guide the individual university staff members in governing their conduct in relation to outside interests that might raise questions of conflicts of interest; and

d. The provision within the university of an informed source of advice and guidance to its staff members for advance consultation on questions they wish to raise concerning the problems that may or do develop as a result of their outside financial or consulting interests, as they relate to their participation in Government-sponsored university research. The university may wish to discuss such problems with the contracting officer or other appropriate Government official in those cases that appear to raise questions regarding conflicts of interest.

The above process of disclosure and consultation is the obligation assumed by the university when it accepts Government funds for research. The process must, of course, be carried out in a manner that does not infringe on the legitimate freedoms and flexibility of action of the university and its staff members that have traditionally characterized a university. It is desirable that standards and procedures of the kind discussed be formulated and administered by members of the university community themselves, through their joint initiative and responsibility, for it is they who are the best judges of the conditions which can most effectively stimulate the search for knowledge and preserve the requirements of academic

freedom. Experience indicates that such standards and procedures should be developed and specified by joint administrative-faculty action.

APPENDIX L

1966 Statement on Professional Ethics

In March, 1965, Committee B distributed a draft of a Statement on Professional Ethics to all Association chapters and conferences for their criticism. The Statement was also published in the Summer, 1965, *Bulletin,* with a request for individual comments.

In October, 1965, the Committee reported to the Council on the membership response to the Statement, and received guidance and instructions to proceed to another draft. It met in December, 1965, and in light of both Council and membership reaction produced a new draft, which was then submitted to the members of the Council for a preliminary response. A third draft was then printed in the Spring, 1966, *Bulletin,* and again membership reaction was solicited.

In April, 1966, the Council approved the following Statement on Professional Ethics, and later that same month the Fifty-Second Annual Meeting at Atlanta adopted the Statement as Association policy.

The members of Committee B who prepared the following statement are: William H. McPherson (Labor and Industrial Relations, University of Illinois), *Chairman,* David M. Bevington (English, University of Virginia), John A. Christie (English, Vassar College), Philip Denenfeld (English, Washington Office), Kenneth E. Eble (English, University of Utah), Joseph M. Nygaard (Education, Butler University), Henry T. Yost (Biology, Amherst College).

Introduction

From its inception, the American Association of University Professors has recognized that membership in the academic profession carries with it special responsibilities. The Association has consistently affirmed these responsibilities in major policy statements, providing guidance to the professor in his utterances as a citizen, in the exercise of his responsibilities to students, and in his conduct when resigning from his institution or when undertaking Government-sponsored research.[1] The Statement on Professional Ethics that follows, necessarily presented in terms of the ideal, sets forth those general standards that serve as a reminder of the vari-

[1] 1964 *Committee A Statement on Extra-Mural Utterances* (Clarification of sec. 1c of the 1940 *Statement of Principles on Academic Freedom and Tenure)*
1966 *Proposed Statement on the Academic Freedom of Students*
1961 *Statement on Recruitment and Resignation of Faculty Members*
1964 *On Preventing Conflicts of Interest in Government-Sponsored Research*

ety of obligations assumed by all members of the profession. For the purpose of more detailed guidance, the Association, through its Committee B on Professional Ethics, intends to issue from time to time supplemental statements on specific problems.

In the enforcement of ethical standards, the academic profession differs from those of law and medicine, whose associations act to assure the integrity of members engaged in private practice. In the academic profession the individual institution of higher learning provides this assurance and so should normally handle questions concerning propriety of conduct within its own framework by reference to a faculty group. The Association supports such local action and stands ready, through the General Secretary and Committee B, to counsel with any faculty member or administrator concerning questions of professional ethics and to inquire into complaints when local consideration is impossible or inappropriate. If the alleged offense is deemed sufficiently serious to raise the possibility of dismissal, the procedures should be in accordance with the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*.

The statement

I. The professor, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognizes the special responsibilities placed upon him. His primary responsibility to his subject is to seek and to state the truth as he sees it. To this end he devotes his energies to developing and improving his scholarly competence. He accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. He practices intellectual honesty. Although he may follow subsidiary interests, these interests must never seriously hamper or compromise his freedom of inquiry.

II. As a teacher, the professor encourages the free pursuit of learning in his students. He holds before them the best scholarly standards of his discipline. He demonstrates respect for the student as an individual, and adheres to his proper role as intellectual guide and counselor. He makes every reasonable effort to foster honest academic conduct and to assure that his evaluation of students reflects their true merit. He respects the confidential nature of the relationship between professor and student. He avoids any exploitation of students for his private advantage and acknowledges significant assistance from them. He protects their academic freedom.

III. As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas he shows due respect for the opinions of others. He acknowledges his academic debts and strives to be objective in his professional judgment of colleagues. He accepts his share of faculty responsibilities for the governance of his institution.

IV. As a member of his institution, the professor seeks above all to be an effective teacher and scholar. Although he observes the stated regulations of the institution, provided they do not contravene academic freedom, he maintains his right to criticize and seek revision. He determines the amount and character of the work he does outside his institution with due regard to his paramount responsibilities within it. When considering the interruption or termination of his service, he recognizes the effect of his decision upon the program of the institution and gives due notice of his intentions.

V. As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

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1966 Statement on Government of Colleges and Universities

Jointly formulated and issued by the American Association of University Professors, the American Council on Education, and the Association of Governing Boards of Universities and Colleges.

Committee T on College and University Government began in 1959 the preparation of a statement on "Faculty Participation in College and University Government"; in 1962 a draft placed before the Council was approved, and there was a minor addition in 1963.

In 1964 the American Council on Education expressed interest in a joint effort to draft a statement which would embrace the roles of the governing board and the administration, as well as that of the faculty. Later in 1964 the Association of Governing Boards of Universities and Colleges indicated a similar interest. These concerns bore fruit in the 1966 Statement which follows.

Professor Ferrel M. Heady was chairman of Committee T from 1958 to 1961; Professor John P. Dawson was chairman from 1961 to 1964; Professor Ralph S. Brown, Jr. (Law, Yale University) became chairman in 1964. Other members of Committee T at the time of adoption of the 1966 Statement were: Robert Bierstedt (Sociology, New York University), Eugene K. Chamberlin (History, San Diego City College), Warren J. Gates (History, Dickinson College), Forest G. Hill (Economics, University of Texas), Jacob D. Hyman (Law, State University of New York at Buffalo), Louis Joughin (History, Washington Office), William N. Leonard (Economics, Hofstra University), Herman Meyer (Mathematics, University of Miami), Otway Pardee (Mathematics, Syracuse University), Henry H. H. Remak (German, Indiana University), and Henry R. Winkler (History, Rutgers, The State University). Two other persons served on Committee T during the entire drafting period, although their terms expired before Council action: Professors Margaret P. Boddy (English, Winona State College) and Valerie A. Earle (Government, Georgetown University).

Editorial Note. The Statement which follows is directed to governing board members, administrators, faculty members, students, and other persons in the belief that the colleges and universities of the United States have reached a stage calling for appropriately shared responsibility and cooperative action among the components of the academic institution. The Statement is intended to foster constructive joint thought and action, both within the institutional structure and in protection of its integrity against improper intrusions.

It is not intended that the Statement serve as a blueprint for government on a specific campus or as a manual for the regulation of controversy among the components of an academic institution, although

it is to be hoped that the principles asserted will lead to the correction of existing weaknesses and assist in the establishment of sound structure and procedures. The Statement does not attempt to cover relations with those outside agencies which increasingly are controlling the resources and influencing the patterns of education in our institutions of higher learning; e.g., the United States Government, the state legislatures, state commissions, interstate associations or compacts, and other inter-institutional arrangements. However, it is hoped that the Statement will be helpful to these agencies in their consideration of educational matters.

Students are referred to in this Statement as an institutional component coordinate in importance with trustees, administrators, and faculty. There is, however, no main section on students. The omission has two causes: (1) the changes now occurring in the status of American students have plainly outdistanced the analysis by the educational community, and an attempt to define the situation without thorough study might prove unfair to student interests[1] *and (2) students do not in fact presently have a significant voice in the government of colleges and universities; it would be unseemly to obscure, by superficial equality of length of statement, what may be a serious lag entitled to separate and full confrontation. The concern for student status felt by the organizations issuing this Statement is embodied in a note "On Student Status" intended to stimulate the educational community to turn its attention to an important need.*

This Statement, in preparation since 1964, is jointly formulated by the American Association of University Professors, the American Council on Education, and the Association of Governing Boards of Universities and Colleges. On October 12, 1966, the Board of Directors of the ACE took action by which the Council "recognizes the Statement as a significant step forward in the clarification of the respective roles of governing boards, faculties, and administrations," and "commends it to the institutions which are members of the Council." On October 29, 1966, the Council of the AAUP approved the Statement, recommended approval by the Fifty-Third Annual Meeting in April, 1967 [and this approval took place], and recognized that "continuing joint effort is desirable, in view of the areas left open in the jointly formulated Statement, and the dynamic changes occurring in higher education." On November 18, 1966, the Executive Committee of the AGB

[1] Note: 1950, the formulation of the *Student Bill of Rights* by the United States National Student Association; 1956, the first appearance of *Academic Freedom and Civil Liberties of Students*, published by the American Civil Liberties Union; 1961, the decision in *Dixon* v. *Alabama State Board of Education*, currently the leading case on due process for students; 1965, the publication of a tentative *Statement on the Academic Freedom of Students*, by the American Association of University Profess[illegible].

took action by which that organization also "recognizes the Statement as a significant step forward in the clarification of the respective roles of governing boards, faculties and administrations," and "commends it to the governing boards which are members of the Association."

I. Introduction

This Statement is a call to mutual understanding regarding the government of colleges and universities. Understanding, based on community of interest, and producing joint effort, is essential for at least three reasons. First, the academic institution, public or private, often has become less autonomous; buildings, research, and student tuition are supported by funds over which the college or university exercises a diminishing control. Legislative and executive governmental authority, at all levels, plays a part in the making of important decisions in academic policy. If these voices and forces are to be successfully heard and integrated, the academic institution must be in a position to meet them with its own generally unified view. Second, regard for the welfare of the institution remains important despite the mobility and interchange of scholars. Third, a college or university in which all the components are aware of their interdependence, of the usefulness of communication among themselves, and of the force of joint action will enjoy increased capacity to solve educational problems.

II. The academic institution: joint effort

A. Preliminary considerations. The variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among governing board, administration, faculty, students, and others. The relationship calls for adequate communication among these components, and full opportunity for appropriate joint planning and effort.

Joint effort in an academic institution will take a variety of forms appropriate to the kinds of situations encountered. In some instances, an initial exploration or recommendation will be made by the president with consideration by the faculty at a later stage; in other instances, a first and essentially definitive recommendation will be made by the faculty, subject to the endorsement of the president and the governing board. In still others, a substantive contribution can be made when student leaders are responsibly involved in the process. Although the variety of such approaches may be wide, at least two general conclusions regarding joint effort seem clearly warranted: (1) important areas of action involve at one time or another the initiating capacity and decision-making participation of all the institutional components, and (2) differences in the weight of each voice, from one point to the next, should be determined by reference to the responsibility of each component for the particular matter at hand, as developed hereinafter.

B. Determination of general educational policy. The general educational policy, i.e., the objectives of an institution and the nature, range, and pace of its efforts, is shaped by the institutional charter or by law, by tradition and historical development, by the present needs of the community of the institution, and by the professional aspirations and standards of those directly involved in its work. Every board will wish to go beyond its formal trustee obligation to conserve the accomplishment of the past and to engage seriously with the future; every faculty will seek to conduct an operation worthy of scholarly standards of learning; every administrative officer will strive to meet his charge and to attain the goals of the institution. The interests of all are coordinate and related, and unilateral effort can lead to confusion or conflict. Essential to a solution is a reasonably explicit statement on general educational policy. Operating responsibility and authority, and procedures for continuing review, should be clearly defined in official regulations.

When an educational goal has been established, it becomes the responsibility primarily of the faculty to determine appropriate curriculum and procedures of student instruction.

Special considerations may require particular accommodations: (1) a publicly supported institution may be regulated by statutory provisions, and (2) a church-controlled institution may be limited by its charter or bylaws. When such external requirements influence course content and manner of instruction or research, they impair the educational effectiveness of the institution.

Such matters as major changes in the size or composition of the student body and the relative emphasis to be given to the various elements of the educational and research program should involve participation of governing board, administration and faculty prior to final decision.

C. Internal operations of the institution. The framing and execution of long-range plans, one of the most important aspects of institutional responsibility, should be a central and continuing concern in the academic community.

Effective planning demands that the broadest possible exchange of information and opinion should be the rule for communication among the components of a college or university. The channels of communication should be established and maintained by joint endeavor. Distinction should be observed between the institutional system of communication and the system of responsibility for the making of decisions.

A second area calling for joint effort in internal operations is that of decisions regarding existing or prospective physical resources. The board, president, and faculty should all seek agreement on basic decisions regarding buildings and other facilities to be used in the educational work of the institution.

A third area is budgeting. The allocation of resources among competing demands is central in the formal responsibility of the governing board, in the administrative authority of the president, and in the educational function of the faculty. Each component should therefore have a voice in the determination of short and long-range priorities, and each should receive appropriate analyses of past budgetary experience, reports on current budgets and expenditures, and short and long-range budgetary projections. The function of each component in budgetary matters should be understood by all; the allocation of authority will determine the flow of information and the scope of participation in decisions.

Joint effort of a most critical kind must be taken when an institution chooses a new president. The selection of a chief administrative officer should follow upon cooperative search by the governing board and the faculty, taking into consideration the opinions of others who are appropriately interested. The president should be equally qualified to serve both as the executive officer of the governing board and as the chief academic officer of the institution and the faculty. His dual role requires that he be able to interpret to board and faculty the educational views and concepts on institutional government of the other. He should have the confidence of the board and the faculty.

The selection of academic deans and other chief academic officers should be the responsibility of the president with the advice of and in consultation with the appropriate faculty.

Determinations of faculty status, normally based on the recommendations of the faculty groups involved, are discussed in Part V of this Statement; but it should here be noted that the building of a strong faculty requires careful joint effort in such actions as staff selection and promotion and the granting of tenure. Joint action should also govern dismissals; the applicable principles and procedures in these matters are well established.[2]

D. External relations of the institution. Anyone—a member of the governing board, the president or other member of the administration, a member of the faculty, or a member of the student body or the alumni—affects the institution when he speaks of it in public. An individual who speaks unofficially should so indicate. An official spokesman for the institution, the board, the administration, the faculty, or the student body should be guided by established policy.

It should be noted that only the board speaks legally for the whole institution, although it may delegate responsibility to an agent.

The right of a board member, an administrative officer, a faculty member, or a student to speak on general educational questions or about the administration and operations of his own institution is a part of his right as a citizen and should not be abridged by the institution.[3] There exist, of course, legal bounds relating to defamation of character, and there are questions of propriety.

[2] See the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings.* These statements have been jointly approved or adopted by the Association of American Colleges and the American Association of University Professors; the 1940 *Statement* has been endorsed by numerous learned and scientific societies and educational associations.

[3] With respect to faculty members, the 1940 *Statement of Principles on Academic Freedom and Tenure* reads: "The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an edu-

III. The academic institution: the governing board

The governing board has a special obligation to assure that the history of the college or university shall serve as a prelude and inspiration to the future. The board helps relate the institution to its chief community: e.g., the community college to serve the educational needs of a defined population area or group, the church-controlled college to be cognizant of the announced position of its denomination, and the comprehensive university to discharge the many duties and to accept the appropriate new challenges which are its concern at the several levels of higher education.

The governing board of an institution of higher education in the United States operates, with few exceptions, as the final institutional authority. Private institutions are established by charters; public institutions are established by constitutional or statutory provisions. In private institutions the board is frequently self-perpetuating; in public colleges and universities the present membership of a board may be asked to suggest candidates for appointment. As a whole and individually when the governing board confronts the problem of succession, serious attention should be given to obtaining properly qualified persons. Where public law calls for election of governing board members, means should be found to insure the nomination of fully suited persons, and the electorate should be informed of the relevant criteria for board membership.

Since the membership of the board may embrace both individual and collective competence of recognized weight, its advice or help may be sought through established channels by other components of the academic community. The governing board of an institution of higher education, while maintaining a general overview, entrusts the conduct of administration to the administrative officers, the president and the deans, and the conduct of teaching and research to the faculty. The board should undertake appropriate self-limitation.

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cational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinion of others, and should make every effort to indicate that he is not an institutional spokesman."

One of the governing board's important tasks is to ensure the publication of codified statements that define the overall policies and procedures of the institution under its jurisdiction.

The board plays a central role in relating the likely needs of the future to predictable resources; it has the responsibility for husbanding the endowment; it is responsible for obtaining needed capital and operating funds; and in the broadest sense of the term it should pay attention to personnel policy. In order to fulfill these duties, the board should be aided by, and may insist upon, the development of long-range planning by the administration and faculty.

When ignorance or ill-will threatens the institution or any part of it, the governing board must be available for support. In grave crises it will be expected to serve as a champion. Although the action to be taken by it will usually be on behalf of the president, the faculty, or the student body, the board should make clear that the protection it offers to an individual or a group is, in fact, a fundamental defense of the vested interests of society in the educational institution.

IV. The academic institution: the president

The president, as the chief executive officer of an institution of higher education, is measured largely by his capacity for institutional leadership. He shares responsibility for the definition and attainment of goals, for administrative action, and for operating the communications system which links the components of the academic community. He represents his institution to its many publics. His leadership role is supported by delegated authority from the board and faculty.

As the chief planning officer of an institution, the president has a special obligation to innovate and initiate. The degree to which a president can envision new horizons for his institution, and can persuade others to see them and to work toward them, will often constitute the chief measure of his administration.

The president must at times, with or without support, infuse new life into a department; relatedly, he may at times be required, working within the concept of tenure, to solve problems of obsolescence. The president will necessarily utilize the judgments of the

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faculty, but in the interest of academic standards he may also seek outside evaluations by scholars of acknowledged competence.

It is the duty of the president to see to it that the standards and procedures in operational use within the college or university conform to the policy established by the governing board and to the standards of sound academic practice. It is also incumbent on the president to insure that faculty views, including dissenting views, are presented to the board in those areas and on those issues where responsibilities are shared. Similarly the faculty should be informed of the views of the board and the administration on like issues.

The president is largely responsible for the maintenance of existing institutional resources and the creation of new resources; he has ultimate managerial responsibility for a large area of nonacademic activities, he is responsible for public understanding, and by the nature of his office is the chief spokesman of his institution. In these and other areas his work is to plan, to organize, to direct, and to represent. The presidential function should receive the general support of board and faculty.

V. The academic institution: the faculty

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, manpower limitations, the time element and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in course, determines when the requirements have been met, and authorizes the president and board to grant the degrees thus achieved.

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

The faculty should actively participate in the determination of policies and procedures governing salary increases.

The chairman or head of a department, who serves as the chief representative of his department within an institution, should be selected either by departmental election or by appointment following consultation with members of the department and of related departments; appointments should normally be in conformity with department members' judgment. The chairman or department head should not have tenure in his office; his tenure as a faculty member is a matter of separate right. He should serve for a stated term but without prejudice to re-election or to reappointment by procedures which involve appropriate faculty consultation. Board, administration, and faculty should all bear in mind that the department chairman has a special obligation to build a department strong in scholarship and teaching capacity.

Agencies for faculty participation in the government of the college or university should be established at each level where faculty responsibility is present. An agency should exist for the presentation of the views of the whole faculty. The structure and procedures for faculty participation should be designed, approved and established by joint action of the components of the institution.

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Faculty representatives should be selected by the faculty according to procedures determined by the faculty.

The agencies may consist of meetings of all faculty members of a department, school, college, division or university system, or may take the form of faculty-elected executive committees in departments and schools and a faculty-elected senate or council for larger divisions or the institution as a whole.

Among the means of communication among the faculty, administration, and governing board now in use are: (1) circulation of memoranda and reports by board committees, the administration, and faculty committees, (2) joint *ad hoc* committees, (3) standing liaison committees, (4) membership of faculty members on administrative bodies, and (5) membership of faculty members on governing boards. Whatever the channels of communication, they should be clearly understood and observed.

On student status

When students in American colleges and universities desire to participate responsibly in the government of the institution they attend, their wish should be recognized as a claim to opportunity both for educational experience and for involvement in the affairs of their college or university. Ways should be found to permit significant student participation within the limits of attainable effectiveness. The obstacles to such participation are large and should not be minimized: inexperience, untested capacity, a transitory status which means that present action does not carry with it subsequent responsibility, and the inescapable fact that the other components of the institution are in a position of judgment over the students. It is important to recognize that student needs are strongly related to educational experience, both formal and informal. Students expect, and have a right to expect, that the educational process will be structured, that they will be stimulated by it to become independent adults, and that they will have effectively transmitted to them the cultural heritage of the larger society. If institutional support is to have its fullest possible meaning it should incorporate the strength, freshness of view and idealism of the student body.

The respect of students for their college or university can be enhanced if they are given at least these opportunities: (1) to be listened to in the classroom without fear of institutional reprisal for the substance of their views, (2) freedom to discuss questions of institutional policy and operation, (3) the right to academic due process when charged with serious violations of institutional regulations, and (4) the same right to hear speakers of their own choice as is enjoyed by other components of the institution.

APPENDIX N

1976 Recommended Institutional Regulations on Academic Freedom and Tenure

Recommended Institutional Regulations on Academic Freedom and Tenure *set forth, in language suitable for use by an institution of higher education, rules which derive from the chief provisions and interpretations of the 1940* Statement of Principles on Academic Freedom and Tenure *and of the 1958* Statement on Procedural Standards in Faculty Dismissal Proceedings. *The* Recommended Institutional Regulations *were first formulated by Committee A on Academic Freedom and Tenure in 1957. A revised and expanded text, approved by Committee A in 1968, reflected the development of Association standards and procedures as set forth in the 1961* Statement on Recruitment and Resignation of Faculty Members, *the 1964* Statement on the Standards for Notice of Nonreappointment, *and the 1966* Statement on Government of Colleges and Universities.

The current revision, approved by Committee A in 1976, is based upon the Association's continuing experience in evaluating regulations actually in force at particular institutions. The 1976 revision is also based upon further definition of the standards and procedures of the Association as set forth in the 1970 Interpretive Comments *of the 1940* Statement of Principles, *the 1971 Council* Statement on Freedom and Responsibility, *the 1971* Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments, *the 1972* Statement of Principles on Leaves of Absence, *and recommended procedure adopted by the Council in 1976 on* Termination of Faculty Appointments because of Financial Exigency, Discontinuance of a Program or Department, or Medical Reasons. *The Association will be glad to assist in interpretation of the regulations or to consult about their incorporation in, or adaptation to, the rules of a particular college or university.*

Committee A will welcome comment on the 1976 Recommended Institutional Regulations *from Association members, chapters, conferences, and other interested persons and organizations.*

Foreword

These regulations are designed to enable the [named institution] to protect academic freedom and tenure and the requirements of academic due process. The principles implicit in these regulations are for the benefit of all who are involved with or are affected by the policies and programs of the institution. A college or university is a marketplace of ideas, and it cannot fulfill its purposes of transmitting, evaluating, and extending knowledge if it requires conformity with any orthodoxy of content and method. In the words of the United States Supreme Court, "Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."

1. *Statement of Terms of Appointment*

(a) The terms and conditions of every appointment to the faculty will be stated or confirmed in writing, and a copy of the appointment document will be supplied to the faculty member. Any subsequent extensions or modifications of an appointment, and any special understandings, or any notices incumbent upon either party to provide, will be stated or confirmed in writing and a copy will be given to the faculty member.

(b) With the exception of special appointments clearly limited to a brief association with the institution, and reappointments of retired fac-

ulty members on special conditions, all full-time appointments to the rank of instructor or higher are of two kinds: (1) probationary appointments; (2) appointments with continuous tenure.

(c) Except for faculty members who have tenure status, every person with a teaching or research appointment of any kind will be informed each year in writing of his appointment and of all matters relative to his eligibility for the acquisition of tenure.

2. *Probationary Appointments*

(a) Probationary appointments may be for one year, or for other stated periods, subject to renewal. The total period of full-time service prior to the acquisition of continuous tenure will not exceed____years,[1] including all previous full-time service with the rank of instructor or higher in other institutions of higher learning [*except* that the probationary period may extend to as much as four years, even if the total full-time service in the profession thereby exceeds seven years; the terms of such extension will be stated in writing at the time of initial appointment].[2] Scholarly leave of absence for one year or less will count as part of the probationary period as if it were prior service at another institution, unless the individual and the institution agree in writing to an exception to this provision at the time the leave is granted.

(b) The faculty member will be advised, at the time of initial appointment, of the substantive standards and procedures generally employed in decisions affecting renewal and tenure. Any special standards adopted by the faculty member's department or school will also be brought to his attention. The faculty member will be advised of the time when decisions affecting renewal or tenure are ordinarily made, and will be given the opportunity to submit material which he believes will be helpful to an adequate consideration of his circumstances.

(c) Regardless of the stated term or other provisions of any appointments, written notice that a probationary appointment is not to be renewed will be given to the faculty member in advance of the expiration of his appointment, as follows: (1) Not later than March 1 of the first academic year of service if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination; (2) not later than December 15 of the second academic year of service if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination; (3) at least twelve months before the expiration of an appointment after two or more years of service at the institution. The institution will normally notify faculty members of the terms and conditions of their renewals by March 15, but in no case will such information be given later than ____.[3]

(d) When a faculty recommendation or a decision not to renew an appointment has first been reached, the faculty member involved will be informed of that recommendation or decision in writing by the body or individual making the initial recommendation or decision, and, if he so requests, he will be advised of the reasons which contributed to that decision. The faculty member may request a reconsideration by the recommending or deciding body.

(e) If the faculty member so requests, the reasons given in explanation of the nonrenewal will be confirmed in writing.

(f) Insofar as the faculty member alleges that the decision against renewal by the appropriate faculty body was based on inadequate consideration, the committee which reviews the faculty member's allegation will determine whether the decision was the result of adequate consideration in terms of the relevant standards of the institution. The review committee will not substitute its judgment on the merits for that of the faculty body. If the review committee believes that adequate consideration was not given to the faculty member's qualifications, it will request reconsideration by the faculty body, indicating the respects in which it believes the consideration may have been inadequate. It will provide copies of its findings to the faculty member, the faculty body, and the president or other appropriate administrative officer.

3. *Termination of Appointment by the Faculty Member*

A faculty member may terminate his appointment effective at the end of an academic year, provided that he gives notice in writing at the earliest possible opportunity, but not later than May 15, or 30 days after receiving notification of the terms of his appointment for the coming year, whichever date occurs later. The faculty member may properly request a waiver of this requirement of notice in case of hardship or in a situation where he would otherwise be denied substantial professional advancement or other opportunity.

[1] [Under the 1940 *Statement of Principles on Academic Freedom and Tenure*, this period may not exceed seven years.]

[2] [The exception here noted applies only to an institution whose maximum probationary period exceeds four years.]

[3] [April 15 is the recommended date.]

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4. *Termination of Appointments by the Institution*

(a) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may be effected by the institution only for adequate cause.

(b) If termination takes the form of a dismissal for cause, it will be pursuant to the procedure specified in Regulation 5.

Financial Exigency

(c) (1) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably *bona fide* financial exigency, i.e., an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means.

[NOTE: Each institution in adopting regulations on financial exigency will need to decide how to share and allocate the hard judgments and decisions that are necessary in such a crisis.

As a first step, there should be a faculty body which participates in the decision that a condition of financial exigency exists or is imminent,[4] and that all feasible alternatives to termination of appointments have been pursued.

Judgments determining where within the overall academic program termination of appointments may occur involve considerations of educational policy, including affirmative action, as well as of faculty status, and should therefore be the primary responsibility of the faculty or of an appropriate faculty body.[5] The faculty or an appropriate faculty body should also exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated. These criteria may appropriately include considerations of age and length of service.

The responsibility for identifying individuals whose appointments are to be terminated should be committed to a person or group designated or approved by the faculty. The allocation of this responsibility may vary according to the size and character of the institution, the extent of the terminations to be made, or other considerations of fairness in judgment. The case of a faculty member given notice of proposed termination of appointment will be governed by the following procedure.]

(2) If the administration issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, the faculty member will have the right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include:

(i) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.

(ii) The validity of the educational judgments and the criteria for identification for termination; but the recommendations of a faculty body on these matters will be considered presumptively valid.

(iii) Whether the criteria are being properly applied in the individual case.

(3) If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments except

[4] See "The Role of the Faculty in Budgetary and Salary Matters," (*AAUP Bulletin*, 58 [Summer, 1972], pp. 170-72), and especially the following passages:

> The faculty should participate both in the preparation of the total institutional budget, and (within the framework of the total budget) in decisions relevant to the further apportioning of its specific fiscal divisions (salaries, academic programs, tuition, physical plants and grounds, etc.). The soundness of resulting decisions should be enhanced if an elected representative committee of the faculty participates in deciding on the overall allocation of institutional resources and the proportion to be devoted directly to the academic program. This committee should be given access to all information that it requires to perform its task effectively, and it should have the opportunity to confer periodically with representatives of the administration and governing board. . . .
>
> Circumstances of financial exigency obviously pose special problems. At institutions experiencing major threats to their continued financial support, the faculty should be informed as early and specifically as possible of significant impending financial difficulties. The faculty—with substantial representation from its nontenured as well as its tenured members, since it is the former who are likely to bear the brunt of the reduction—should participate at the department, college or professional school, and institutionwide levels, in key decisions as to the future of the institution and of specific academic programs within the institution. The faculty, employing accepted standards of due process, should assume primary responsibility for determining the status of individual faculty members.

[5] See "Statement on Government of Colleges and Universities" (*AAUP Bulletin*, 52 [Winter, 1966], pp. 375-79), and especially the following passage:

> Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgement is central to general educational poli-

in extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.

(4) Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.

(5) In all cases of termination of appointment because of financial exigency, the faculty member concerned will be given notice or severance salary not less than as prescribed in Regulation 8.

(6) In all cases of termination of appointment because of financial exigency, the place of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and a reasonable time in which to accept or decline it.

Discontinuance of Program or Department Not Mandated by Financial Exigency[*]

(d) Termination of an appointment with continuous tenure, or of a probationary or specified appointment before the end of the specified term, may occur as a result of *bona fide* formal discontinuance of a program or department of instruction. The following standards and procedures will apply.

(1) The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by the faculty as a whole or an appropriate committee thereof.

[NOTE: "Educational considerations" do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.]

(2) Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the institution, with or without retraining, the faculty member's appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member's length of past and potential service.

[NOTE: When an institution proposes to discontinue a program or department of instruction, it should plan to bear the costs of relocating, training, or otherwise compensating faculty members adversely affected.]

(3) A faculty member may appeal a proposed relocation or termination resulting from a discontinuance and has a right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5 but the essentials of an on-the-record adjudicative hearing will be observed. The issues in such a hearing may include the institution's failure to satisfy any of the conditions specified in this section. In such a hearing a faculty determination that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on other issues will rest on the administration.

Termination for Medical Reasons

(e) Termination of an appointment with tenure, or of a probationary or special appointment before the end of the period of appointment, for medical reasons, will be based upon clear and convincing medical evidence that the faculty member cannot continue to fulfill the terms and conditions of the appointment. The decision to terminate will be reached only after there has been appropriate consultation and after the faculty member concerned, or someone representing the faculty member, has been informed of the basis of the proposed action and has been afforded an opportunity to present the faculty member's position and to respond to the evidence. If the faculty member so requests, the evidence will be reviewed by the Faculty Committee on Academic Freedom and Tenure [or whatever title it may have] before a final decision is made by the governing board on the recommendation of the administration. The faculty member will be given severance salary not less than as prescribed in Regulation 8.

Review

(f) In cases of termination of appointment, the governing board will be available for ultimate review.

[*] When discontinuance of a program or department is mandated by financial exigency of the institution, the standards of section 4(c) above will apply.

5. *Dismissal Procedures*

(a) Adequate cause for a dismissal will be related, directly and substantially, to the fitness of the faculty member in his professional capacity as a teacher or researcher. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.

(b) Dismissal of a faculty member with continuous tenure, or with a special or probationary appointment before the end of the specified term, will be preceded by: (1) discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement; (2) informal inquiry by the duly elected faculty committee [insert name of committee] which may, failing to effect an adjustment, determine whether in its opinion dismissal proceedings should be undertaken, without its opinion being binding upon the President; (3) a statement of charges, framed with reasonable particularity by the President or the President's delegate.

(c) A dismissal, as defined in Regulation 5(a), will be preceded by a statement of reasons, and the individual concerned will have the right to be heard initially by the elected faculty hearing committee [insert name of committee].[7] Members deeming themselves disqualified for bias or interest shall remove themselves from the case, either at the request of a party or on their own initiative. Each party will have a maximum of two challenges without stated cause.[8]

(1) Pending a final decision by the hearing committee, the faculty member will be suspended, or assigned to other duties in lieu of suspension, only if immediate harm to himself or others is threatened by his continuance. Before suspending a faculty member, pending an ultimate determination of his status through the institution's hearing procedures, the administration will consult with the Faculty Committee on Academic Freedom and Tenure [or whatever other title it may have] concerning the propriety, the length, and the other conditions of the suspension. A suspension which is intended to be final is a dismissal, and will be treated as such. Salary will continue during the period of the suspension.

(2) The hearing committee may, with the consent of the parties concerned, hold joint prehearing meetings with the parties in order to (i) simplify the issues, (ii) effect stipulations of facts, (iii) provide for the exchange of documentary or other information, and (iv) achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.

(3) Service of notice of hearing with specific charges in writing will be made at least twenty days prior to the hearing. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges against him or asserts that the charges do not support a finding of adequate cause, the hearing tribunal will evaluate all available evidence and rest its recommendation upon the evidence in the record.

(4) The committee, in consultation with the President and the faculty member, will exercise its judgment as to whether the hearing should be public or private.

(5) During the proceedings the faculty member will be permitted to have an academic advisor and counsel of his own choice.

(6) At the request of either party or the hearing committee, a representative of a responsible educational association shall be permitted to attend the proceedings as an observer.

(7) A verbatim record of the hearing or hearings will be taken and a typewritten copy will be made available to the faculty member without cost, at the faculty member's request.

(8) The burden of proof that adequate cause exists rests with the institution and shall be satisfied only by clear and convincing evidence in the record considered as a whole.

(9) The hearing committee will grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.

(10) The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The administration will cooperate with the hearing committee in securing witnesses and making available documentary and other evidence.

(11) The faculty member and the administration will have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear, but the committee determines that the interests of justice require admission of their statements, the committee will identify the witnesses, disclose their statements, and if possible provide for interrogatories.

(12) In the hearing of charges of incompetence, the testimony shall include that of qualified faculty members from this or other institutions of higher education.

(13) The hearing committee will not be

[7] [This committee should not be the same as the committee referred to in Regulation 5(b) (2).]

[8] [Regulations of the institution should provide for alternates, or for some other method of filling vacancies on the hearing committee resulting from disqualification, challenge without stated cause, illness, resignation, or any other reason.]

bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

(14) The findings of fact and the decision will be based solely on the hearing record.

(15) Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the governing board of the institution. The President and the faculty member will be notified of the decision in writing and will be given a copy of the record of the hearing.

(16) If the hearing committee concludes that adequate cause for dismissal has not been established by the evidence in the record, it will so report to the President. If the President rejects the report, he will state his reasons for doing so, in writing, to the hearing committee and to the faculty member, and provide an opportunity for response before transmitting the case to the governing board. If the hearing committee concludes that adequate cause for a dismissal has been established, but that an academic penalty less than dismissal would be more appropriate, it will so recommend, with supporting reasons.

6. *Action by the Governing Board*

If dismissal or other severe sanction is recommended, the President will, on request of the faculty member, transmit to the governing board the record of the case. The governing board's review will be based on the record of the committee hearing, and it will provide opportunity for argument, oral or written or both, by the principals at the hearings or by their representatives. The decision of the hearing committee will either be sustained, or the proceeding returned to the committee with specific objections. The committee will then reconsider, taking into account the stated objections and receiving new evidence if necessary. The governing board will make a final decision only after study of the committee's reconsideration.

7. *Procedures for Imposition of Sanctions Other than Dismissal*

(a) If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a severe sanction, such as suspension from service for a stated period, the administration may institute a proceeding to impose such a severe sanction; the procedures outlined in Regulation 5 shall govern such a proceeding.

(b) If the administration believes that the conduct of a faculty member justifies imposition of a minor sanction, such as a reprimand, it shall notify the faculty member of the basis of the proposed sanction and provide him with an opportunity to persuade the administration that the proposed sanction should not be imposed. A faculty member who believes that a major sanction has been incorrectly imposed under this paragraph, or that a minor sanction has been unjustly imposed, may, pursuant to Regulation 15, petition the faculty grievance committee for such action as may be appropriate.

8. *Terminal Salary or Notice*

If the appointment is terminated, the faculty member will receive salary or notice in accordance with the following schedule: at least three months, if the final decision is reached by March 1 (or three months prior to the expiration) of the first year of probationary service; at least six months, if the decision is reached by December 15 of the second year (or after nine months but prior to eighteen months) of probationary service; at least one year, if the decision is reached after eighteen months of probationary service or if the faculty member has tenure. This provision for terminal notice or salary need not apply in the event that there has been a finding that the conduct which justified dismissal involved moral turpitude. On the recommendation of the faculty hearing committee or the President, the governing board, in determining what, if any, payments will be made beyond the effective date of dismissal, may take into account the length and quality of service of the faculty member.

9. *Academic Freedom*

All members of the faculty, whether tenured or not, are entitled to academic freedom as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*, formulated by the Association of American Colleges and the American Association of University Professors.

10. *Reappointment of Nontenured Faculty*

If a faculty member on probationary or other nontenured appointment alleges that a decision not to reappoint him was based significantly on considerations violative of (1) aca-

demic freedom or (2) governing policies on making appointments without prejudice with respect to race, sex, religion, or national origin, the allegation will be given preliminary consideration by the [insert name of committee], which will seek to settle the matter by informal methods. The allegation shall be accompained by a statement that the faculty member agrees to the presentation, for the consideration of the faculty committees, of such reasons and evidence as the institution may allege in support of its decision. If the difficulty is unresolved at this stage, and if the committee so recommends, the matter will be heard in the manner set forth in Regulations 5 and 6, except that the faculty member making the complaint is responsible for stating the grounds upon which he bases his allegations, and the burden of proof shall rest upon him. If the faculty member succeeds in establishing a *prima facie* case, it is incumbent upon those who made the decision not to reappoint him to come forward with evidence in support of their decision.

11. *Administrative Personnel*

The foregoing regulations apply to administrative personnel who hold academic rank, but only in their capacity as faculty members. Where an administrator alleges that a consideration violative of academic freedom significantly contributed to a decision to terminate his appointment to an administrative post, or not to reappoint him, he is entitled to the procedures set forth in Regulation 10.

12. *Political Activities of Faculty Members*

Faculty members, as citizens, are free to engage in political activities. Where necessary, leaves of absence may be given for the duration of an election campaign or a term of office, on timely application, and for a reasonable period of time. The terms of such leave of absence shall be set forth in writing, and the leave will not affect unfavorably the tenure status of a faculty member, except that time spent on such leave will not count as probationary service unless otherwise agreed to.[9]

[NOTE: Regulations 13, 14, and 15 are suggested in tentative form, and will require adaptation to the specific structure and operations of the institution; the provisions as recommended here are intended only to indicate the nature of the provisions to be included, and not to offer specific detail.]

13. *Graduate Student Academic Staff*

(a) The terms and conditions of every appointment to a graduate or teaching assistantship will be stated in writing, and a copy of the appointment document will be supplied to the graduate or teaching assistant.

(b) In no case will a graduate or teaching assistant be dismissed without having been provided with a statement of reasons and an opportunity to be heard before a duly constituted committee. (A dismissal is a termination before the end of the period of appointment.)

(c) A graduate or teaching assistant who establishes a *prima facie* case to the satisfaction of a duly constituted committee that a decision not to reappoint him was based significantly on considerations violative of (1) academic freedom or (2) governing policies on making appointments without prejudice with respect to race, sex, religion, or national origin, will be given a statement of reasons by those responsible for the nonreappointment and an opportunity to be heard by the committee.

(d) Graduate or teaching assistants shall have access to the faculty grievance committee, as provided in Regulation 15.

14. *Other Academic Staff*

(a) In no case will a member of the academic staff[10] who is not otherwise protected by the preceding regulations which relate to dismissal proceedings be dismissed without having been provided with a statement of reasons and an opportunity to be heard before a duly constituted committee. (A dismissal is a termination before the end of the period of appointment.)

(b) With respect to the nonreappointment of a member of such academic staff who establishes a *prima facie* case to the satisfaction of a duly constituted committee that a consideration violative of academic freedom significantly contributed to the nonreappointment, he will be given a statement of reasons by those responsible for the nonreappointment and an opportunity to be heard by the committee.

15. *Grievance Procedure*

If any faculty member feels that he has cause for grievance in any matter not covered by the procedures described in the foregoing Regulations, he may petition the elected faculty grievance committee [here name the committee] for redress. The petition shall set forth in detail the nature of the grievance and shall state against whom the grievance is directed. It

[9] [See "Statement on Professors and Political Activity," *AAUP Bulletin*, 55 (Autumn, 1969), pp. 388-389.]

[10] [Each institution should define with particularity who are members of the academic staff.]

shall contain any factual or other data which the petitioner deems pertinent to his case. The committee will have the right to decide whether or not the facts merit a detailed investigation. Submission of a petition will not automatically entail investigation or detailed consideration thereof. The committee may seek to bring about a settlement of the issue satisfactory to the parties. If in the opinion of the committee such a settlement is not possible or is not appropriate, the committee will report its findings and recommendations to the petitioner and to the appropriate administrative officer and faculty body, and the petitioner will, at his request, be provided an opportunity to present his case to them. The grievance committee will consist of three [or some other number] elected members of the faculty. No officer of administration shall serve on the committee.

Note on Implementation

The Recommended Institutional Regulations here presented will require for their implementation a number of structural arrangements and agencies. For example, the Regulations will need support by:

(a) channels of communication between all the involved components of the institution, and between them and a concerned faculty member,

(b) definitions of corporate and individual faculty status within the college or university government, and of the role of the faculty in decisions relating to academic freedom and tenure,

(c) appropriate procedures for the creation and operation of faculty committees, with particular regard to the principles of faculty authority and responsibility.

The forms which these supporting elements assume will of course vary from one institution to another. Consequently, no detailed description of the elements is attempted in these Recommended Institutional Regulations. With respect to the principles involved, guidance will be found in the 1966 *Statement on Government of Colleges and Universities*, jointly formulated by the American Council on Education, the Association of Governing Boards of Universities and Colleges, and the American Association of University Professors.

On Processing Complaints of Discrimination on the Basis of Sex

The report which follows was prepared by a subcommittee of Committee A on Academic Freedom and Tenure. The Committee voted on June 7, 1977, to approve the publication of the report in the Bulletin. *Comments from chapters, conferences, and interested individuals will be welcome and should be addressed to the Washington Office.*

I. Background and Purpose

The 1971 Annual Meeting approved a resolution which called upon the Association to:

> develop procedures as quickly as possible to use various measures, including censure, against colleges and universities practicing any sort of discrimination contrary to AAUP policy, including discrimination on the basis of age, sex, race, color, religion, national origin, or marital status.

In response to this resolution, the Council of the Association established a Committee on Discrimination, whose first report was published in the summer of 1972.[1] The Council Committee interpreted the 1971 resolution of the Annual Meeting

> as asking that the Association expand its traditional concern for the freedom of academics to include explicitly concern for the opportunity *to be* an academic, and as urging that the Association, through its statements and its actions, manifest a commitment to protect faculty members from retributive action not only for what they say and do, but also for what they *are*.

The Council Committee recommended to Committee A two changes in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*. The first recommendation proposed that Regulation 1, which provides for a statement of terms of appointment, be amended to include the following language:

> Appointments will be made on the basis of the prospective fitness of faculty members in their professional capacities as teachers or researchers and will be without prejudice with respect to race, sex, religion, or national origin.

In its spring, 1972, meeting, Committee A, while noting that the proposed addition to Regulation 1 is "obviously commendable on first impression," requested a more precise definition "of standards for determining when considerations of race, sex, religion, or national origin may or may not be appropriate and relevant in decisions on faculty appointment."[2]

Committee A did, however, implement the second recommendation of the Council Committee and modified Regulation 10 to provide nontenured faculty members with recourse to an appeals procedure, potentially involving a full hearing, if they believe that nonrenewal of appointment "may have been based on reasons violating the institution's own policy with respect to discrimination."[3] The report of Committee A pointed out that this modification, while providing faculty access to

[1] *AAUP Bulletin*, 58 (June, 1972), pp. 160-163.

[2] "Report of Committee A, 1971-72," *AAUP Bulletin*, 58 (June, 1972), pp. 153, 154.

[3] *Ibid*., p. 154. Regulation 10 currently states: "If a faculty member on probationary or other nontenured appointment alleges that a decision not to reappoint him was based significantly on considerations violative of (1) academic freedom or (2) governing policies on making appointments without prejudice with respect to race, sex, religion, or national origin, the allegation will be given preliminary consideration by the [insert name of committee], which will seek to settle the matter by informal methods. The allegation shall be accompanied by a statement that the faculty member agrees to the presentation, for the consideration of the faculty committees, of such reasons and evidence as the institution may allege in support of its decision. If the difficulty is unresolved at this stage, and if the committee so recommends, the matter will be heard in the manner set forth in Regulations 5 and 6, except that the faculty member making the complaint is responsible for stating the grounds upon which he bases his allegations, and the burden of proof shall rest upon him. If the faculty member succeeds in establishing a *prima facie* case, it is incumbent upon those who made the decision not to reappoint him to come forward with evidence in support of their decision.

institutional procedures, did not "express an Association position on the ultimate question as to what constitutes permissible or impermissible discrimination."

The 1972 Council Committee report concluded that "complaints of discrimination against particular individuals generally can and should be processed adequately under existing Association policy and procedure." In addition, despite a number of reservations discussed in its report, the Council Committee concluded that in appropriate circumstances a formal Association investigation of "cases and conditions involving patterns of discrimination" should be authorized.

The 1973 Report of the Council Committee on Discrimination, entitled "Affirmative Action in Higher Education" and published in the summer of 1973, stressed that institutions of higher education should review and, where necessary, revise their standards for academic recruitment, appointment, and advancement in order to promote affirmative action.[4] It also approved of "statistical forecasts under an affirmative action plan" as "entirely sound and congenial to the standards of the AAUP."

Committee A again considered the Association's practice regarding discrimination in its June, 1973, meeting, and its Chairman reported to the 1973 Annual Meeting as follows:

> With respect to discrimination, reported cases that will show our members and the community of higher education that we mean what we have been saying are conspicuous by their absence. I believe that such cases can be developed, they do not have to be fabricated. I believe that it is proper for the Annual Meeting once again to direct such a course. I believe that such a direction, and its implementation, would be far more effective than once more attempting to redefine discrimination in terms of academic freedom, and thus, as it were, to smuggle it into our existing doctrine.

The Chairman of Committee A accordingly proposed, and the 1973 Annual Meeting adopted, the following resolution, which the Chairman characterized as "essentially a reaffirmation" of the 1971 resolution:

> The Association is committed to use its procedures and to take measures, including censure, against colleges and universities practicing any sort of discrimination contrary to AAUP policy, including discrimination on the basis of age, sex, physical handicap, race, color, religion, national origin, or marital status.
>
> The General Secretary and the national staff are directed actively to look out for, develop, and report to Committee A for action, selected cases of discrimination, especially against women.

After discussion of the second paragraph of this motion at the meeting of Committee A in June, 1976, the Committee voted to establish a subcommittee, with one member designated by Committee W on the Status of Women in the Academic Profession, to study the problems involved in identifying and processing a complaint of sex discrimination.

[4] *AAUP Bulletin*, 59 (June, 1973), pp. 178–183.

The 1973 Report of the Council Committee on Discrimination, "*Affirmative Action in Higher Education*," aptly describes the problems facing the community of higher education which wishes simultaneously to preserve its professional standards and "compensate for past failures to reach the actual market of intellectual resources available to higher education." The report identifies a number of factors endemic to the academic enterprise at this time and in this country which work effectively to deny women a place in the university proportionate to their numbers and qualifications. It does not, however, speak to Association procedures which would assist in remedying the problems it so cogently identifies. The undersigned subcommittee, therefore, has decided to describe the types of evidence relevant to determining the existence of sex discrimination and to develop guidelines to help faculty members, administrative officers, and the staff of the Association identify and process complaints of sex discrimination.

Formulating the criteria by which the Association defines and processes complaints presents an extremely difficult task. The 1965 "Report of the Special Committee on Procedures for the Disposition of Complaints Under the Principles of Academic Freedom and Tenure," by Sanford H. Kadish, Ralph S. Brown, Jr., and Walter P. Metzger, pointed out that this difficulty exists with respect to the entire range of Committee A activity.[5] Selecting and processing cases for action from the large number of complaints which reach the Washington staff necessarily involves "a large element of discretion." As a result, any formulation of criteria "would have to be accomplished in general terms which by themselves did not automatically dictate judgment." The report concluded that the articulation of general standards for judgment should be encouraged. The result "would not be to restrain the staff's discretion but to rationalize its exercise."

The importance of proving motivation in order to sustain a complaint of sex discrimination, and the limited experience in dealing with such complaints both within and outside the Association, suggest that the recommendation in the 1965 report is particularly applicable to this area. This report attempts to articulate relevant standards for judgment in dealing with complaints involving sex discrimination.

II. The Nature of Sex Discrimination Claims

Sex discrimination can occur at every stage of decision in an individual's teaching career (e.g., entry, salary, fringe benefits, assignments, academic rank, reappointment, tenure, and retirement). At each stage, some complaints of sex discrimination may be accompanied by supporting evidence of a relatively conventional kind. More often than not, however, sex discrimination claims present the special difficulty of probing motivation.

[5] *AAUP Bulletin*, 51 (May, 1965), pp. 210–221.

A. *The Importance of Motivation*

Most complaints involving sex discrimination require proof of an improper motive for an otherwise proper action. The need to assess motivation in processing complaints is not limited to those alleging sex discrimination. Many other complaints involving a faculty member's status, such as allegations that the faculty member's appointment was not renewed for reasons violative of academic freedom or that a dismissal for financial exigency was in bad faith, rest upon demonstration of improper motivation. To a significant extent, evidence to support allegations of sex discrimination must be sought in much the same way as in other complaints of violations of Association standards.

Proving improper motivation can, however, be more difficult in the area of sex discrimination because it is the kind of discrimination that often relates to who a person *is* rather than to what a person says or does.[6] In a complaint involving academic freedom, for example, the complainant will generally assert that the adverse action which allegedly constitutes a violation of academic freedom is a retaliation for something the complainant did or said and that, but for the protected speech or conduct, the adverse action would not have occurred. Sex discrimination, on the other hand, may not result from anything anyone says or does. The involuntary characteristic of sex may itself motivate discrimination. It is difficult in such circumstances to point to an "incident" to which the alleged discrimination can be traced, a fact which ordinarily makes proof of discrimination much more elusive.

Principles and standards relating to academic freedom, moreover, have gained more widespread acceptance in the academic community than any analogous principles and standards in the area of sex discrimination in academic life. Consequently, it seems reasonable to anticipate that some faculty members and administrative officers may be less sensitive to, and less supportive of, complaints of sex discrimination than experience has shown them to be concerning complaints raising issues of academic freedom.

B. *Evidence of Sex Discrimination*

Ascertaining whether improper motive was exercised in a given case becomes more manageable when the general search for bias is made more concrete. The categories listed below are intended to specify the types of evidence from which sex discrimination can be inferred. While descriptive, they are not intended to be exhaustive.

These categories consist, in general, of evidence specifically related to sex, and evidence reflecting general institutional deficiencies not specifically related to sex. Direct evidence of sexual bias and unequal application of standards are examples of evidence specifically related to sex. Vague criteria for appointment and promotion, failure to give reasons for nonrenewal upon the faculty member's request, inadequate grievance mechanisms, and deviations from procedures normally employed by an institution are examples of evidence reflecting general deficiencies in procedure. This second type of evidence, while not necessarily as probative of sex discrimination as evidence which is specifically related to sex, might, where there is more direct evidence, be considered part of the totality of circumstances from which sex discrimination can be inferred.

(1) *Direct Evidence of Sex Discrimination.* Criteria which are themselves discriminatory, and sexist statements or conduct, provide direct evidence of sex discrimination. Criteria used for making decisions in colleges and universities are rarely discriminatory on their face. It is highly unlikely that such criteria would be used to select for or against a sexual characteristic.[7] Sexist statements or conduct, whether or not well-intentioned, also constitute direct evidence of sex discrimination, and are much more common than obviously discriminatory criteria. Such evidence would be present, for example, if a member of a tenure committee were to state: "Women make bad engineers" or "I will resign if a woman is granted tenure."

(2) *Unequal Application of Standards.* Unequal treatment of men and women provides one of the most telling forms of evidence of sex discrimination. A criterion might be applied to a member of one sex but not to a similarly situated member of the opposite sex; or the same criterion might be applied more rigorously to a member of one sex than to a similarly situated member of the opposite sex. For example, a woman may be denied tenure (1) for lack of a Ph.D. in a department that has recently granted tenure to a man without one; (2) because of "inadequate teaching" when her teaching evaluations are virtually identical to those of a male faculty member who has been granted tenure; or, (3) where standards traditionally considered important by the institution would have strongly suggested a different result.

Because sex discrimination is seldom overt, statistical evidence is an essential tool. Statistics may not, alone, establish discrimination, but they can provide an adequate basis for requesting an explanation from the institution. In approving the "relevance of statistics as a means of shifting the burden to come forward with evidence," the Council Committee pointed to the historically effective application of statistics in detecting and remedying racial discrimination in the composition of juries. The committee noted that, because it was virtually impossible to prove that the persistent absence of blacks from juries was the result of discrimination in *each particular case*, federal courts came to regard the significant disparity in the proportion of blacks on juries as permitting a *prima facie* inference that racial discrimination was a contributing element. This inference

[6] See the 1972 "Report of the Council Committee on Discrimination," p. 160.

[7] An exception would be an improper "anti-nepotism" regulation. See "Faculty Appointment and Family Relationship," *AAUP Bulletin*, 57 (June, 1971), p. 221.

shifted the burden to the state, even though overt discrimination could not be proved in an individual case.

The following types of statistical data, while not individually or collectively determinative, may be meaningful in cases involving allegations of sex discrimination at the college and university level: (1) salary differentials between men and women (comparisons should, where possible, take into account factors such as institution, department, rank, and years of experience);[8] (2) numerical differentials between men and women (comparisons should, where possible, take into account the same factors as in salary differentials, and also tenured or nontenured status); (3) the proportion of women on the faculty in relation to (a) the number of qualified women available for appointment, and (b) affirmative action goals; (4) changes in the percentage of women on the faculty; (5) the number and distribution of women on decision-making bodies; and (6) differential promotion and tenuring rates. The Association should intensify its work in gathering and developing such statistical data to the extent that they are not already available from other sources.

(3) *General Deficiencies in Procedure.* The general deficiencies in procedure summarized above are familiar to the Association's work. The operating assumption that procedural irregularities often indicate substantive violations has guided traditional Committee A work. The Association, when presenting an academic freedom case to administrative officers, often refers to inadequate evaluation procedures and provisions for due process, the failure to state reasons for nonreappointment, or the statement of vague reasons, as increasing its concern.[9] The Association, on occasion, has also expressed concern over a substantive decision which is an inexplicable departure from results generally reached in similar circumstances. The importance of circumstantial evidence in establishing sex discrimination suggests careful attention to this factor.

It is important to reiterate that these types of evidence from which sex discrimination can be inferred are not exhaustive, and that they cannot be fitted into an abstract formula which might indicate in advance the precise combination of relevant criteria that would create a presumption of sex discrimination in a particular case. The identification and processing of complaints involving sex discrimination must depend on accumulated precedent and on the sensitivity and judgment of those responsible for seeing them to a conclusion.

[8] See Scott, *Higher Education Salary Evaluation Kit: A Recommended Method for Flagging Women and Minority Persons for Whom There is Apparent Salary Inequity and a Comparison of Results and Costs of Several Suggested Methods* (Washington, D.C.: American Association of University Professors, 1977).

[9] See "Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments," *AAUP Bulletin*, 57 (June, 1971), pp. 206-210.

III. Processing by the Association of Complaints of Sex Discrimination

This section of the subcommittee's report, while it may also be applicable in part to review bodies at colleges and universities, discusses particular aspects of the processing by the Association's staff of complaints of sex discrimination. As in the subcommittee's specification of evidence of sex discrimination, this discussion is not intended to be exhaustive.

A. The Complaint

1. Complaint Evaluation. The faculty member who believes his or her rights as an academic have been infringed and who seeks the assistance of the Association is expected to present relevant evidence. Faculty colleagues and members of the Association's staff can often be helpful in clarifying issues and identifying the kind of evidence that may be pertinent. Staff members should help faculty members recognize and develop complaints involving sex discrimination by explaining what constitutes "evidence" and by guiding complainants in collecting such evidence. Inquiries currently made of complainants who allege certain procedural violations (for example, seeking, *inter alia*, letters of appointment, the faculty handbook, the current contract, and a letter of termination) provide an appropriate analogy.

2. "Mixed" Complaints. Complaints by faculty members will often include the possibility of both sex discrimination and other violations of Association policy. Thus, for example, the complaint may involve late notice or excessive probation as well as sex discrimination. Although the former grounds may more easily be established, any evidence of sex discrimination should be carefully collected and weighed. The more obvious violation, standing alone, may ultimately be deemed an inadequately serious matter to warrant further action. The complaint of sex discrimination, on the other hand, may reflect serious problems which should be pursued. Collecting evidence of sex discrimination is therefore important even when the complaint could be processed on some other, more easily established, ground.

3. Multiple Jurisdictions. Complainants should be systematically informed by the staff of their right to go to the Equal Employment Opportunity Commission (EEOC), to other state and federal administrative agencies, and to the courts. The Association in principle is willing to proceed even if an EEOC complaint or a judicial action is also initiated, but it is often more difficult for the Association to pursue a complaint which is simultaneously pending before an administrative or judicial body. College and university officials are less likely to cooperate with representatives of the Association in both the production and assessment of relevant evidence when other proceedings have been instituted.

These facts should be conveyed to complainants, but without any suggestion that the complainant's election of institutional, administrative, and/or judicial remedies would preclude the Association's involvement in a

complaint of sex discrimination any more than in a complaint involving academic freedom. In appropriate circumstances, the Association should pursue the complaint and attempt to discover the relevant evidence even though institutional officials may decline to cooperate in the inquiry.

B. Case Status

A "complaint" becomes a "case" in Association terminology when the General Secretary, or a staff member acting on behalf of the General Secretary, communicates with a college or university administration to express the Association's concern, usually with a recommendation for corrective action.

1. Informal Assistance. The Association's staff may, and often should, take a variety of steps before deciding whether the evidence warrants opening a case, including the collection and analysis of data, letters or calls of inquiry, informal efforts to resolve the difficulty, and assistance in helping the complainant pursue remedies through institutional channels. Institutional channels, including hearings before faculty committees as provided by the *Recommended Institutional Regulations*, are in many instances the best forum for an initial review of the range of complaints brought to the attention of the Association. The particular difficulties inherent in proving sex discrimination underline the value of such hearings, which give institutions an opportunity to resolve disputes internally and produce a record upon which the institution's own action can later be reviewed by the Association under a standard of reasonableness. The test for taking any of these steps should be the same for complaints alleging sex discrimination as for any other complaint: whether the action contemplated is an appropriate measure under the circumstances. The complainant need not provide the Association with any specific quantum of proof to gain informal assistance.

2. Standard for Opening a Case. A case may be opened when the information available to the staff permits a reasonable inference of a significant departure from principles or procedural standards supported by the Association. This is no magical moment, clear to all involved. It is the point at which staff can responsibly state to the administration that a credible claim appears to exist. The initial approach to the administration should explain that the assessment offered has been based primarily on information received from other sources and should invite the administration to comment and to provide information which might add to the Association's understanding of the matter.

This procedure for opening a case applies to the entire range of Committee A complaints and, in essence, reflects the judgment that there is an adequate basis for asking the university to provide a valid explanation. Placing a burden of explanation on the university can be justified on two grounds: (1) sufficient evidence exists to enable the Association's staff to make a reasonable inference that a lack of adherence to standards supported by the Association may have occurred, and (2) the university has better access to the reasons for its position.

3. The Response of the Administration. On some occasions, an administration will respond by accepting the staff's recommendation for corrective action. On other occasions, the administration's explanation of its position will prove, after further discussion with the complainant, to meet the Association's concerns. On still other occasions, an administration may state reasons which appear valid on their face, but are in fact a pretext that camouflages a departure from principles or procedural standards supported by the Association. As in establishing an inference that a departure may have occurred, it will often be necessary to rely on circumstantial evidence to demonstrate that an apparently valid reason is actually a pretext. These determinations are difficult and must be made carefully. The Association does not, for example, substitute its own judgment for the professional judgment of an academic department. Nor does it do so in evaluating a claim of sex discrimination. In an assessment of whether a stated reason is valid, it is not the right to judge that is being questioned, nor the expertise of the judges, but whether the judgment was, in fact, professional and non-discriminatory. Thus, an administration's apparently valid explanation of an action against a complainant, like the staff's expression of its reasonable inference that sex discrimination was actually a factor in such a decision, is rebuttable rather than conclusive.

C. Formal Investigation

1. Standard for Authorizing an Investigation. The degree of importance of the principles and procedural standards at issue in a particular case, the degree of seriousness of the case itself, and the utility of an investigation and a potential published report, are major factors in a decision by the General Secretary to authorize an investigation by an *ad hoc* committee. The resolutions passed by the 1971 and 1975 Annual Meetings emphasize that the Association has committed itself to use all its applicable procedures and sanctions, including censure, in appropriate cases involving sex discrimination. The importance of clarifying and elaborating Association policy in the area of sex discrimination is an additional factor to consider in a decision to investigate.

2. Investigation during Litigation. The 1963 "Report of the Special Committee on Procedures for the Disposition of Complaints under the Principles of Academic Freedom and Tenure" pointed out that the pendency of litigation often makes it difficult for the Association to conduct a formal investigation. Institutional officials may, on the advice of counsel, decline to cooperate. As the 1963 report noted, this position may be justified, or it may unreasonably be used as an obstructive device.[10] Moreover, the importance of such cooperation may vary from case to case. In deter-

[10] Committee A has periodically reviewed this issue. The difficulties in proceeding with the investigation are noted in

mining whether to authorize a formal investigation while litigation is pending, the interests of the Association, which are based on its own standards of proper academic practice, may be different from the issues before the courts.

3. Composition and Briefing of Investigating Committees. The Association properly strives to have at least one person on each investigating committee who has previously served on such a committee. The need for experience likewise suggests that an *ad hoc* committee investigating a case potentially involving sex discrimination have a member adequately experienced and that the committee be well briefed on the nature of such claims and how they are handled by courts and agencies.

4. "Mixed" Cases. Investigating committees are likely to be presented with cases involving both sex discrimination and other issues of concern to the Association. In addition, investigating committees may encounter general practices of sex discrimination unrelated to the case that originally prompted the investigation. The question arises whether in these situations the committee should address the sex discrimination issues even though a report might be written without reference to sex discrimination. While decisions on the scope of an investigation rest in the last analysis with the *ad hoc* committee itself, the 1965 report concluded that reports of investigating committees should not be restricted to the particular issues which prompted the investigation.

> The Association's functions in freedom and tenure cases are not restricted to judging the particular case of the aggrieved professor. We are not merely an academic legal aid society, but a force for academic freedom and tenure throughout American higher education. When that force can be exerted by dealing generally with the health of the institution under investigation or by dealing with issues of a potentially recurrent character, we believe the opportunity should be taken. An investigation should be regarded as an occasion for the advancement of the principles of the Association rather than as a step in a grievance process; while reports of this character may take somewhat longer they are worth the cost. And where the pursuit of not strictly material issues carries the committee to areas of uncertain and fruitless speculation the staff and Committee A may be relied upon to reduce the report to its proper dimension.

The subcommittee reaffirms this view, with the caveat that the investigating committee must in each situation determine whether the facts are so unclear that comment might be premature. The inquiries and reports of investigating committees in cases involving claims of sex discrimination, therefore, should address these claims, as they relate both to the individual complainant and to the institution generally, even though other aspects of the complaint could be addressed without reaching them.

IV. General Patterns of Sex Discrimination in the Absence of an Individual Complaint

Investigations normally are not authorized unless the Association has received an individual complaint. The 1965 report, however, concludes that in certain circumstances investigations should proceed in the absence of an individual complaint. The report points out that conditions in general may be so bad that it would be artificial to dwell on a single offense, that professors may be too intimidated to initiate a complaint, and that severe violations may occur which do not cost anyone a job. It notes with approval a particular investigation that was authorized because of reports of generally poor conditions rather than as a result of a specific complaint and expresses the hope that further investigations will be authorized in this manner.

The reasons stated in the 1965 report for supporting investigations in the absence of specific cases apply with special force to matters of sex discrimination. Statistical evidence might identify situations that are generally so bad that adequate grounds to justify an investigation already are present. Professors who feel discriminated against, and those who might have evidence of discrimination, seem especially likely to feel intimidated, particularly by the threat of adverse future actions. Further, these cases are more likely than most to place the individual faculty member in opposition to colleagues, rather than only to the administration. In addition, the merits of an individual's case would not be at issue in analyzing a general pattern, a significant consideration given the difficulty of proving discrimination in particular cases. Finally, investigations based on statistical data would often enable the Association to focus on the basic source of the problem. The relevant statistical base for a general pattern would often be larger, and might therefore provide more meaningful comparisons than are possible in individual cases.

Investigations based on statistical data, once adequately developed, should be a useful supplement to the case method, and, in some respects, could deal with the available evidence more effectively than the case method. Egregious patterns and examples of sex discrimination, as revealed by statistical data and proper investigation and analysis, should be brought to the attention of the profession.

Carol Simpson Stern (Interpretation), Northwestern University, *Chairman*
William J. Kilgore (Philosophy), Baylor University
David M. Rabban (Law), Washington Office
Abraham D. Sofaer (Law), Columbia University
The Subcommittee

"The Report of Committee A, 1971-72," *AAUP Bulletin*, 58 (June, 1972), p. 145. In 1974, the committee "reaffirmed its position that litigation and investigation can be pursued simultaneously under certain circumstances." See *AAUP Bulletin*, 61 (April, 1975), p. 16.

APPENDIX P

CENSURED ADMINISTRATIONS

Alabama

Alabama State University (1962)*
Troy State University (1969)

Arizona

Arizona State University (1976)

Arkansas

College of the Ozarks (1964)
Southern Arkansas University (1971)
Philips County Community College (1978)
Philander Smith College (1980)

Colorado

Colorado School of Mines (1973)

Georgia

Armstrong State College (1972)

Illinois

McKendree College (1973)

Iowa

College of Osteopathic Medicine and Surgery (1977)

Kentucky

Murray State University (1976)

Louisiana

Southern University (1968)
Southeastern Louisiana University (1970)
Grambling State University (1971)

Maryland

University of Maryland (1979)

Massachusetts

Nichols College (1980)

*Date in parentheses is the date the administration was censured.

Michigan

Detroit Institute of Technology (1969)
University of Detroit (1978)
Olivet College (1980)

Missouri

Concordia Seminary (1975)

Nebraska

Nebraska State Colleges (1965)

New Jersey

Rider College (1973)
Camden County College (1974)

New York

Onondaga Community College (1972)
City University of New York (1977)
State University of New York (1978)

North Carolina

Wingate College (1979)

Oklahoma

Central State University (1969)

Pennsylvania

Grove City College (1963)
Wilkes College (1977)

South Carolina

Voorhees College (1974)

South Dakota

South Dakota State College and Universities (1962)
Northern State College (1969)

Tennessee

Tennessee Wesleyan College (1971)

Texas

Amarillo College (1968)
Texas A & M University (1968)
Frank Phillips College (1969)
Laredo Junior College (1971)
Houston Baptist University (1975)

Blinn College (1976)
University of Texas Health Science Center at Houston (1977)
University of Texas of the Permian Basin (1979)

Virginia

Virginia Community College System (1975)

Wisconsin

Marquette University (1976)

APPENDIX Q

COMPREHENSIVE LIST OF CASES RELATED TO ACADEMIC FREEDOM AND TENURE IN HIGHER EDUCATION

Abeveta v. The Town of Taos, 499 F.2d 323 (10th Cir. 1974).

Adamian v. Jacobsen, 523 F.2d 929 (9th Cir. 1975).

Arnett v. Kennedy, 416 U.S. 134 (1974).

Atkinson v. Board of Trustees of the University of Arkansas, 559 S.W.2d 473 (Arkansas Sup. Ct. 1977).

Aumiller v. University of Delaware, 434 F.Supp. 1273 (D.Del. 1977).

Beck v. Board of Trustees of State Colleges, 32 Conn.Sup. 153, 344 A.2d 273 (1975).

Bence v. Breier, 501 F.2d 1185 (7th Cir. 1974)

Bignall v. N. Idaho College, 538 F.2d 243 (9th Cir. 1976).

Blair v. Board of Regents of State University and Community College System, Tennessee, 496 F.2d 322 (6th Cir. 1974).

Blunt v. Marion County School Board, 515 F.2d 951 (5th Cir. 1975).

Bradley v. New York University, 124 N.Y.S.2d 238 (Sup.Ct. 1953), aff'd, 283 App.Div. 671, 127 N.Y.S.2d 815, aff'd mem., 307 N.Y. 620, 120 N.E.2d 828 (1954).

Brouillette v. Board of Directors of Merged Area IX, Alias Eastern Iowa Community College, 519 F.2d 126 (8th Cir. 1975).

Buhr v. Buffalo Public School District, 509 F.2d 1196 (8th Cir. 1974).

Clark v. Holmes, 474 F.2d 928 (7th Cir. 1972)

Codd v. Velger, 429 U.S. 624 (1977).

Collins v. Parsons College, 203 N.W.2d 594 (Iowa 1973)

Collins v. Wolfson, 498 F.2d 1100 (5th Cir. 1974).

Cook County College Teachers Union v. Taylor, 432 F.Supp. 270 (N.D. Ill. 1977).

County School Board of Spotsylvania v. McConnell, 215 Va. 603, 212 S.E.2d 264 (1975).

Cramer v. Virginia Commonwealth Univ., 415 F.Supp. 673 (E.D.Va. 1976).

Cusamano v. Ratchford, 507 F.2d 980 (8th Cir. 1974).

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